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STANDING COMMITTEE ON RESOURCES DEVELOPMENT

ONTARIO HIGHWAY TRANSPORT BOARD AMENDMENT ACT
TRUCK TRANSPORTATION ACT

WEDNESDAY, AUGUST 31, 1988

Morning Sitting



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From the Ministry of Transportation:

Kelch, Margaret, Acting Deputy Minister and Assistant Deputy Minister, Safety and Regulation

From Canada Transport Group:

Baker, Richard F., President and Chief Executive Officer

From Reimer Express Enterprises Ltd.:

Reimer, Gerald F., Executive Vice-President



LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON RESOURCES DEVELOPMENT

Wednesday, August 31, 1988

The committee met at 10:13 a.m. in room 228.

ONTARIO HIGHWAY TRANSPORT BOARD AMENDMENT ACT
TRUCK TRANSPORTATION ACT
(continued)

Consideration of Bill 87, An Act to amend the Ontario Highway Transport Board Act, and Bill 88, An Act to regulate Truck Transportation.

Mr. Chairman: The standing committee on resources development will come to order. Just before we start, may I remind members who went to Windsor yesterday to turn in their airline receipts to the clerk before they leave this week.

This morning, we have two presentations, one of which is from Richard Baker, president of Canada Transport. Mr. Baker is here and ready to go. If you would take a seat, we welcome you to the committee. Mr. Baker's presentation has been distributed to the members.

CANADA TRANSPORT GROUP

Mr. Baker: It is a pleasure to be here this morning. My presentation on behalf of my companies was quite brief in written form. There are some parts I thought I might elaborate on by way of explanation as we go through it.

I am president and chief executive officer of my group of companies and also a major shareholder. Our companies are head-officed in Belleville, Ontario. We actually have four distinct groupings within our overall group, which we call the Canada Transport Group.

Canada Transport Ltd. is the oldest company, dating back to 1907. It is a less-than-truckload and truckload carrier serving central and eastern Ontario and western Quebec as well as having international authority into New York and Michigan. Basically, we operate from Cambridge through the Niagara Peninsula and throughout the rest of Ontario to the Quebec border and as far as about Three Rivers. We have a very broad base of customers, over 4,000. The operation is about 65 to 70 per cent LTL, the balance truckload. It is about 95 per cent domestic Canadian traffic; only five per cent of it is international traffic.

Our second company—actually, our largest single company—is Can-Truck Transportation Ltd., which is a contract carrier serving General Motors, both domestically here in Canada as well as internationally back and forth between some 85 plants in the General Motors system and a lot of its vendors. I might just point out that this company and a couple of our other companies are what I would largely call contract carriers. That is United States terminology, as you are probably aware, but we think it is appropriate. They are companies that are contracted to deal solely with that one shipper. Every freight bill is paid by that company.

Many of the things in Bills 87 and 88 do not really have much bearing on that type of an operation; so the majority of my comments are going to be related to the impact on Canada Transport Ltd. We have a third company, called CTG Sprint Transportation, which is based in Windsor and provides similar services to the Ford Motor Co. as does Can-Truck to General Motors. That company is not pure Ford; it is about 85 per cent Ford. The balance of the business is other automotive-type accounts that are used to balance Ford's business.

Finally, we have four truck lines called the Ryan Expediting Group, based in Livonia, Michigan, which is a suburb of Detroit. These are companies we acquired a year or so ago. They have intra-Michigan authority, as well as interstate authority between, I guess, 48 states. They tend to operate primarily in Michigan, Ohio and Indiana. That group of companies does some contract work for the automotive industry and some general freight work for other non-automotive-type businesses, both TL and LTL. It is also involved in consolidations and distribution-type business.

Our primary concerns with Bill 88 affect Canada Transport, as opposed to the other companies. The US operations, of course, give us some insight into the environment that exists, in Michigan particularly and also Indiana, Ohio and New York, with respect to intrastate authority applications. I am going to come to that in a few minutes. I want to qualify in the beginning that we are very much free enterprisers. We are Canadian-owned. There are three major shareholders, of which I am one. All of our senior executives are also minority shareholders. We are very much Canadian-owned, very much owned by the management that runs the business.

In essence, whether we call it deregulation, reregulation or whatever, the principle of less restrictive requirements to operate our businesses is something we like. In principle, we do not have any problems with the intent, or what we think is the intent, of Bills 87 and 88. Our concern is that it unfold in a way that does not disadvantage us versus our competitors, particularly our competitors from outside of Ontario. In the presentation, I have identified four areas where we have concern.

The first one is the area of reciprocal treatment of operating right applications. This is an issue which has been headed by a presentation, I believe, by the Ontario Trucking Association. We certainly concur with it and, as a result of our experience with Michigan-owned companies, we know exactly what we are speaking of. Today, it is almost impossible for us to expand our intra-Michigan authority, even with one of our Michigan companies, and those companies have been in existence for 25 years or more within the state of Michigan; they are chartered in Michigan.

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Whether we are considered a foreigner in their eyes, because we are Canadian-owned, or whether we are considered local, because we are dealing with a company that has been in existence in Michigan for 25 years, does not seem to make any difference. The ability to expand authority in Michigan and the other adjoining states is nigh on to impossible at this stage in time. Our concern is that under Bill 88 it would be quite simple for a carrier domiciled elsewhere to obtain intra-Ontario authority and, at the same time, we could not get the same privilege in, let's say, Michigan or New York.

One of the things we feel is that when you write legislation you must deal with it on a very broad perspective and you cannot start singling out specific markets. In reality, the provinces of Ontario and Quebec and the states of New York, Michigan, Ohio, Indiana, and perhaps Illinois, are a trading block. Whether we want to accept it or not, in reality, the bulk of the business that goes on in international, interstate or interprovincial traffic occurs in that block of states and provinces. As that block goes, so goes our marketplace. In other words, if we create a fully open marketplace within Ontario and there is not a similar situation in those adjoining states, we have disadvantaged those of us who have built a business within Ontario, such as ourselves. As I say, we date back over 80 years.

We have had some discussions with the Department of Transport of the state of Michigan as to its outlook on expanding authorities for carriers. Their concern is they do not feel the dust has settled yet on the deregulation under the Motor Carrier Act that went into effect in 1980 in the United States. They feel it is going to be the early 1990s before that really settles out and the marketplace is back to whatever a normal marketplace might be. Hence, they are very reluctant—and they have told us this directly—to ease up and expand intrastate authority until such time as they see the market stabilized. There have been a number of companies, Michigan-based particularly, and other states as well, that have run into chapter 11 and nearly shut their doors.

Every time that happens, it takes with it not just the drivers—we always seem to feel that the drivers move on somewhere else—but all the administrative staff that goes behind it. That is also a concern of ours here in Ontario. There are a number of tax issues, which have been discussed—and I am not going to dwell on them—that provide an advantage in other jurisdictions to operate a great deal of the administration operations. Unfortunately, trucking is a unique business—this almost sounds like a pun—in that it is a very mobile business. You can operate your administration from a remote location. You can operate the transportation of goods from either end of the service or even in the middle of the service. Unlike a manufacturing operation, which you just cannot literally pick up and transport that easily, you can do this with a trucking operation.

I may be a little hesitant to cite a specific example, but I think there is one that has been most prominent recently here in Ontario. McCollum Transport, a long-standing Ontario company, a car hauler, was purchased by an American group, E and L Transport out of Southfield, Michigan, and basically it laid off all of the administrative staff that were based in Oshawa—they have all been laid off—and all that operation has been moved to Southfield, Michigan. There are some advantages for consolidation for them, but the big advantage is in cost; simply that their tax situation, the cost of personnel and various other things are much cheaper in Southfield than they are here in Ontario.

That is a continuing concern to us as Ontario residents. We do not want to be put in the position that to be competitive we have to do the same sort of thing.

In our case, it would be very simple for us to take a great deal of our administrative operations and move them, say, to upstate New York—Watertown, Syracuse, someplace like that. They would love to have us; they are offering incentives to us all the time to do those sort of things. We know we can employ people at lower cost than we do in Ontario. As a Canadian, I do not like that, but if we are put at a disadvantage economically by legislation

that we have to operate under, then we have to look for every possible means we can to reduce our costs of operation and that is one of them that is very, very real.

The second area where we are most concerned and probably have a very large concern is the so-called fitness test. Today, the fitness test, as it is written in the draft legislation, is very, very basic. It is about the same degree of fitness, I would expect, if I was being asked if I could be a Canadian citizen—not much more.

Our concern is with respect to the LTL business. I think we must recognize there is a very substantial difference between truckload and LTL. Truckload businesses have tremendous flexibility. They operate with very low overhead and require very little infrastructure in terms of terminals, personnel, dispatch and so forth. They can be very flexible.

In our presentation here, I draw the comparison between what we have today as an infrastructure to support an LTL operation running from Cambridge through to Montreal, and we have terminals, I believe, in 11 cities. We could very, very easily do that same business if we had a terminal in Toronto and a terminal in Montreal. Those are the two key trading centres. In fact, we would not even have to be in either Toronto or Montreal, we could be close to them. If it were a truckload business, you would need only two terminals, at the most, to do that business.

With an LTL operation, you require a terminal, we feel, for every 75-mile radius of service. If you are blanketing an area of service, then you are going to need a terminal once in every 75-mile radius.

We know from experience of our own and from experience of some of our peers that when you go in to set up a terminal and operate into a new area, by the time you set up the terminal, put sales forces out on the street and put service in place, you can expect to create a \$150,000 to \$250,000 loss in starting that operation before it turns the corner and starts to produce a profit.

Those are big dollars, and when I see carriers applying for all-Ontario permits for general freight LTL that I know are numbered companies with nothing more than a rented office with a rented desk and a rented telephone, I ask myself, how are they going to sustain that kind of an operation? The answer is, I do not think they can. The other answer is, I do not think they ever intend to.

But the key question comes back to this issue of what I call skimming. If a number of carriers have all-of-Ontario service on a blanket basis, even though they probably intend to be primarily truckload carriers, if they are able to go into any market in Ontario and solicit on what I call a skimming basis, or on an ad hoc basis, a shipment here, a shipment there to simply fill their trucks to get back to home base, that is going to take the base core revenue out of the LTL business for those of us who do operate LTL operations.

The net result will be that the costs of the smaller shipments, particularly to the smaller communities, are going to skyrocket.

Today, a typical small shipment in Ontario, a minimum shipment of 50 pounds or 100 pounds, is going to be somewhere in the \$20 to \$35 range. Frankly, we cannot do it for \$20 to \$35. If that was the whole business that we as LTL operators ran, you cannot run that business at those sorts of prices or that type of pricing. It is the 1,000-, 2,000-, 5,000-pound LTL shipments that cross-subsidize those small shipments.

Unfortunately, it is the small businesses that get the small shipments, so if you skim off that layer of 2,000 pounds and up—which I project will happen; we already see it happening from time to time but it will certainly happen if you generate a series of broad, all-Ontario licences—then what you are going to do is cause that small shipment to be not a \$35 shipment but a \$100 shipment, a \$100 bill, which is going to place tremendous hardship on the small business, particularly in the outlying communities.

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I happen to be in head office in Belleville, as I mentioned, and we regularly see it where a truckload carrier will come into town with a truckload shipment. He will discharge his freight with his customer and then the driver or dispatcher from some remote place will get on the telephone and ask two or three companies that he may know in the area, "What have you got?" They say: "All we have is an LTL here. There is a 2,000- or 3,000-pound shipment." "That is okay. We will take it." And away it goes.

Now, today, those carriers are operating with a C licence where technically they can put only one of those on per shipment. They still do it because it will cover their variable costs, but if they have the flexibility of a general freight licence to take two, three or four of those, wherever, and skim that off the top of the LTL business, the cost structure that we face in the LTL business today will dramatically change and it will dramatically change to the detriment of the small shipper.

There are many cases where this is happening in the United States. If you look at comparative rates of LTL in the United States, recognizing that today the LTL business in the United States is now controlled by eight carriers—80 per cent of the business is being done by eight carriers and that concentration will increase—it is not unusual now to see minimum shipments in the \$60 to \$70 range in key markets in the United States because there are no other options.

So I feel this has to be looked at very, very closely in terms of the creation of new licences. I am not afraid of the competition. I emphasize that very strongly. We will compete with anybody on a fair basis and we will find a fair rate, whatever it may be, but what I am trying to do is look at it from the standpoint of what happens in the marketplace. If we cannot make money in the LTL business, we will go out of the LTL business. We will ship to those areas where we can make money. But somebody is going to be the loser and I suggest to you it is the small shipper, particularly the small shipper in the outlying community.

So somewhere, somehow, in the performance of the fitness test, I think there has to be some real credibility set out where the applicant has to identify how and to what extent he intends to run that business. I would dearly like to see that applicant have to pass the same kind of test as he would have to pass with his banker. If he walked over to his banker and said, "I am getting this licence to serve all of Ontario for any kind of freight. My capitalization is \$5,0000. How about it? I am going to need \$1 million to get started," he would be laughed right out of the bank.

I think the bill, the legislation, and the administration of the legislation have to provide that same kind of control. If you do not, I guarantee that you will see the skimming process take place. The disadvantage will be the pressure that is placed on the costs of the LTL carriers and the LTL carriers, in turn, can only react in one way—by increasing the price of their service.

Incidentally, when you look very critically at the province of Ontario, at the last count I made there are about 10 or 11 what I would call serious LTL carriers; carriers who have at least 30 or 40 per cent of their business in the LTL market. Every carrier, from one point or another, does a little bit of LTL from time to time but when you go across the province there are about 10 to 11 what I would call serious LTL carriers. Those are the ones who will be impacted by this and those are the carriers who handle the bulk of the intraOntario traffic today.

We do have international carriers who are making their presence felt here in the province. But today, that has not gone far enough to take that business away, at this time, from the likes of ourselves, the Taggarts, the Listowels or various companies like those which are the core LTL carriers in Ontario.

If the United States carrier can take off what he requires to service his system—recognizing that most of the US carriers do not necessarily want to be intraOntario carriers; they want to be international carriers but they want to use intraOntario traffic to balance their system—and then you superimpose truckload carriers who now have the ability to handle any variation of LTL they may wish to fill their trucks to come back home, what is left for those 10 or 11 LTL carriers will drop dramatically, but particularly it will skim that top cost structure off, forcing up the costs on the minimum shipments.

A third area of concern is with respect to the valuation of licences. We happen to be a very fast-growing company. We have created that growth by acquisition of licences. Today we have approximately \$2.5 million worth of PCV authorities on our books. That includes intraOntario, intraQuebec, interprovincial and international. Under Bill 88, as it is now written, we feel those licences would drop to about \$100,000 in value, that simply being the legal costs of going out and getting those licences.

First, that is not going to make our balance sheet very happy. It certainly is not going to make us or our bankers very happy. We recognize that as something that was coming, but the part we have the most difficulty with is the fact that at this time neither the federal nor provincial government appears ready to give us any consideration from a tax position other than the normal write-off on that licence, which is a 50 per cent basis. At least our US competitors in 1980 were given 100 per cent write-off on those licences.

We feel that in effect—and I realize that some of these things are tied to the federal level—with the combination of federal and provincial legislation, you are destroying a \$2.5 million asset we have. Those are hard words but I think that is the reality. What we are simply saying is that we are not asking to be reimbursed for it; we are simply asking that we be given a 100 per cent tax consideration for it.

My final item is to deal with the area of enforcement. Again, I do not mean to be sarcastic or overly critical, but enforcement of the existing PCV legislation has been extremely weak within Ontario over the last decade for a

number of reasons, and I am aware of a lot of them—cost structure and so forth. However, any legislation we are going to have, in my opinion, is of minimal value if we do not enforce it.

I realize as the marketplace broadens and there are more players in the marketplace it gets more and more difficult to enforce. But I urge you, in looking at every step of the legislation, to ensure that it is enforceable and that the resources are in place to enforce it. If they are not, then the legislation becomes, I would not say meaningless, but of limited value.

That is the essence of our position. We welcome any questions.

Mr. Chairman: Several members have indicated an interest. I want to ask one question. You make it quite clear that, in your opinion, the LTL rates will rise.

Mr. Baker: Yes.

Mr. Chairman: Will the truckload rates decline?

Mr. Baker: No, not significantly. In fact, I would not expect any change at all. The reason I say that is, because of our other corporate involvement, we are dealing very extensively in truckload business, both domestically and internationally. We know the level of rates. I can tell you what rates truckload freight moves at in Arizona or Arkansas or Ontario or wherever, and our rate structure today in truckload freight is right on a par with the North American scale. It is now down to the point where truckload traffic moves at cost plus a small margin.

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Mr. Chairman: The only reason I ask is that if, as you point out, the truckloads are subsidizing the less than truckload, if the carriers are not doing that LTL business any more for the reasons you have outlined, then why would the truckload rates not decline through competition?

Mr. Baker: In years gone by, I would have said that perhaps the LTL operations subsidized the truckload and maybe there was a stage when truckload subsidized LTL. Today, they both seem to be on an equal basis where one is not cross-subsidizing the other.

More and more you have specialists in each area. You have truckload carriers who are pure truckload carriers. That is all they do. You have LTL carriers who are striving very hard to be 100 per cent LTL carriers. As that structure keeps evolving, they are becoming distinctly different markets and distinctly different companies. The only thing that the truckload operator wants out of the LTL business is that when he cannot get an appropriate truckload to fill his empty miles, he can skim some LTL to do it.

Incidentally, operationally we strive for an under eight per cent empty miles factor in our truckload operations. At today's rate levels, let's say at almost North American-wide rate levels, if you have more than 10 per cent empties, you are losing money. You have to be under 10 per cent to be competitive in today's marketplace. That is the plight for this 2,000 or 10,000 pounds of freight.

Mr. Wildman: You indicated that the LTL in the US now is controlled by only eight carriers. How does that compare with the period prior to deregulation in the US?

Mr. Baker: I cannot give you an exact number but there were probably in excess of 150. There were many more than that.

Mr. Wildman: You are talking about majors, though.

Mr. Baker: Majors—in other words, carriers who are doing in excess of say \$50 million a year in LTL—there were probably 150 to 200.

Mr. Wildman: What led to the shakedown that resulted in only eight now?

Mr. Baker: The impact of deregulation, partly. There were some companies in there that obviously had been carrying along on a weak management basis and folded.

With LTL, the key factor is having a strong capital base and having very sophisticated management information systems. That is what these big carriers have. We are not big by any means but we have over \$2 million worth of software and hardware today in our system to handle LTL and truckload. That is very difficult for a smaller carrier to support.

Mr. Wildman: Then you are talking, obviously, about a significant dislocation with regard to the management, clerical and sales people behind the trucks in that shakedown period.

Mr. Baker: That is right.

Mr. Wildman: Could you comment on what has happened with LTL rates in the US as a result of this concentration?

Mr. Baker: First of all, let's look at it as it was before deregulation. In the United States, it was highly regulated. In many cases you would have sizeable markets with one or two carriers serving that market. The rates were extremely high, comparatively much higher than in Ontario.

I cannot think of a town of more than 10,000 population in Ontario that does not have at least three to four LTL carriers serving it today. The classic we always use is Peterborough. I think there are 18 or so serving Peterborough. The net result is that there has always been more competition. Our rate levels were lower to start with.

In 1980, when deregulation came in, obviously a whole lot of people started thrashing around and rates dropped dramatically. There was no question in my mind of the game plan on the part of some of the larger carriers—the Yellows, the Consolidated Freightways, the Roadways and so forth—to become truly North American and to take the marketplace any way they could.

There were obviously cases of predatory pricing, the so-called low-balling going into a new market area. If you are a Yellow or a Roadway and you take that particular market, if it represents only \$2 million a year in sales to you and you are doing \$1 billion, it is nothing to you to low-ball that market. But to the local guy, where that represents half or more of his market, you can put him to the wall very quickly.

That is the scenario that happened. Let's be very honest. We all like to think that everybody in the world is very ethical, but when it comes to business and taking advantage of a market or a customer for the almighty dollar, it happens. That is reality.

That simply forced many companies to say, "We can't make it." There were other companies that tried to make that step into the big league but did not have the capitalization, did not have the management, did not have the management information systems. Those companies are falling by the wayside now. Most of them have fallen. There are probably 10 to 15 more significant companies—I am talking about companies with over \$50 million per year in sales—that will go to chapter 11 in the next two years in the United States.

That will then have housecleaned the marketplace. You will now have your eight biggies in the LTL business. You have a new breed of very specialized LTL carriers, like the J. B. Hunts and the M and S Transports, carriers that are very low cost experts in truckload. They are becoming very large and are also taking truckload away from the smaller truckload operators.

The smaller truckload operator can move with his marketplace easier and can size his business up and down much easier. In an LTL operation, you have to have terminals and you have to have a lot of personnel in place. The beauty of the truckload is you either have it or you do not have it; you either have a full load or you do not have a full load.

Mr. Wildman: If more go to chapter 11 and you get the eight remaining carriers, that concentration, do you anticipate rates will then start to climb?

Mr. Baker: They have already. There has been a lot of discounting going on among the various carriers right up until the last four or five months. That seems to have bottomed out. I think the big carriers are realizing that all they are doing is cutting to take from each other and there seems to be a turning around now of those rates.

Mr. Wildman: This has taken approximately eight years?

Mr. Baker: Yes. Realize that all the time this has been happening, our market has not been status quo. The OHTB has certainly been more liberal in granting authorities over the last eight years than it was prior to that, so there is more market competition here. We cannot stand alone. I cannot deal with an international company. If it has a rate down in Michigan and I am charging the rate up here in Ontario, it is not sitting tight for that; it is comparing. Our numbers are all moving together, as are our costs of operation.

Mr. Wildman: You said you anticipate that in Ontario the result of this legislation would be a skyrocketing—that is the word you used—of the cost for small shipments for small businesses in small communities in Ontario.

Mr. Baker: Correct.

Mr. Wildman: Do you have any evidence of that happening in the US as a result of its experience?

Mr. Baker: Yes. Again, look at the rate structures. We all hear about the discounting going on in the United States. First of all, the discounting is largely happening with large shippers that have a lot of volume to offer and a lot of clout to negotiate. The little guy with the corner store, the little jewellery store or whatever, who gets two or three shipments a week does not have that kind of clout and is not getting those sorts of discounts. He deals in the bottom end or the low end of the freight; that is, up to 100 or 200 pounds. His rates have gone up dramatically in the last three years.

Mr. Wildman: I represent a northern Ontario riding and the largest community in my riding has 5,000 people. That is the metropolis of Algoma. We are talking about the main east-west highways, Highway 17 and Highway 11, which go through our area, but we are talking about very small, distant communities. Would you anticipate that there would be difficulty even getting shipping? After all, it is on the main east-west highways.

Mr. Baker: Northern Ontario presents a little different problem. LTL largely is northbound only. Truckload southbound is a giveaway program, as you are well aware. We happen to haul beer and liquor and a few commodities like that up north, and you beg and steal whatever you can in the way of plywood or paper coming south. There is very little in the way of LTL shipments coming south.

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What I would see happening is that the northern Ontario LTL carrier will lose some of his, let us say, better-quality LTL freight and there will be some upward pricing, some upward pressure on the lower pricing of LTL. Where it is going to have most effect is in the Highway 401 corridor, a community like London or St. Thomas or wherever, where you have perhaps as much LTL coming out as you have going in, and you have a mix of truckload going out and in too where the truckload carrier takes a truckload—I will use Belleville as an example. If someone brings a truckload out of Hamilton to Belleville and he wants to get back to Hamilton, he scurries around and picks up a 3,000-pound LTL shipment back to Hamilton.

Mr. Wildman: Just to cover the cost of his fuel.

Mr. Baker: Just to cover his variable costs to get back home.

Mr. Chairman: Perhaps we could come back to you, Mr. Wildman. Virtually every member wants to ask a question and we are running late.

Mr. Smith: Just on a point of clarification to start, you used the initials LCL. Did you mean LTL?

Mr. Baker: Yes.

Mr. Smith: We were in Windsor yesterday and we heard some presentations there. They talk about the administrative costs over on the Michigan side. I guess I want to hear your point of view, your opinion, as to how cheap wages are in Michigan, and maybe in your case, in New York state, relative to our wages paid here, whether they be in administration or for truck drivers. How much difference is there?

Mr. Baker: I can use my own companies, because I have people in both situations. Livonia, by the way, is a suburb of Detroit, so we do not look on it as being a low-cost labour area, particularly the automotive industry. On a dollar-for-dollar basis, without impacting exchange, our wages generally are 25 per cent lower in Michigan. When you have a 75-cent dollar, that basically says it is on par. As that dollar moves higher, then the advantage in the United States gets higher.

The other thing we find is that benefits are not nearly as extensive in the United States as they are in Canada. We do not have the provincially or federally mandated benefit plans and the benefit packages tend to be about 65 per cent of the cost of what they are here in Ontario.

Mr. Smith: So that is the big difference right there; it is the benefits factor, really, with the dollar being 20 per cent lower.

Mr. Baker: Right, but I also have to look at it from the standpoint of whether we are always going to have a 75-cent to 80-cent dollar. Nobody will guarantee me that. The world tells me that down the road that could be a 90-cent or 95-cent dollar. That is a completely different situation.

Mr. Smith: Under free trade, it is very apt to come up to par.

Mr. Baker: That is right.

Mr. Smith: I come from the Chemical Valley down in Sarnia-Lambton and the people there would like me to support this bill. I have my own reservations from a little person's point of view, I guess. In your opinion, why would they really want this bill? Is it really to start being so efficient, cutting you people? To me, it has to be hurting people somewhere along the line, but I wonder if you could tell me why some of the big companies in the Chemical Valley would be in favour of this bill.

Mr. Baker: I think it has become more of an emotional issue than a factual issue for many of the big shippers. In a chemical industry, most of the product moves by bulk hauler. That is a very specialized field. There are X number of them in the marketplace and are not likely to be many more, one way or another. Deregulation is not going to change that. It is capital investment there. That is not a game you get into casually, because you do not start renting tankers and bulkers and so forth. Nobody will rent them to you. You have to have contracts and you have to own them, so I do not see them getting particularly increased competition in bulk haulage.

Over the last few years, a number of American bulk haulers got broad authority here in Canada, people like Matlack and so forth, so they have more options than they have ever had for their commodities.

I think basically, and I will give it as another example, the companies I deal with in the automotive industries are all supporting this bill. It is not going to do anything for them. Their clout in the marketplace is so great with the size of business they have that regardless of what legislation exists, they are cutting a deal today that is to the bone, because it is very competitive and there are enough players there who want their business. I do not see the big shippers seeing anything happen to their business from what it is today, not a single thing. I think it is an emotional issue with them now.

Mrs. Marland: Mr. Baker, when you talk about the fitness area, you mentioned it should be as strict as going to your bank manager and those other kinds of requirements. I think that is a significant part of this legislation for those of us who are not in the industry or in related industries. We are all responsible for the people who also share those highways as transportation corridors.

I wonder if you, as someone who is in the industry, have any suggestions about other sources of evaluation to obtain that background. Are there other people who could be regarded as—I do not mean back door information. I was thinking of people who might know whether companies were notorious for marginal operations, low maintenance, that kind of thing. Would you perhaps see the possibility of enforcement officers, ministry staff—to scan their records would be as easy, I suppose, as scanning records under the Highway Traffic Act.

We heard yesterday in Windsor about some of the marginal operations and how people are really put at risk by those kinds of people in the trucking industry. Do you have any further suggestions about how that fitness evaluation can be done openly, not competitively?

Mr. Baker: Yes. I think the big thing you are fighting is that you are legislators and you have a body of people called administrators who have to make it work. Administrators traditionally want it, as we call it in manufacturing, like a go/no-go gauge. It has a hole that big: if it fits through it is okay, and if it does not fit through it is no good. Administration people want it very simple, not judgemental.

When you start making some of these evaluations, there is a degree of judgement there. The expertise is there within your ministry staff and there is the enforcement level with the Ontario Highway Transport Board. There is a tremendous amount of experience on that board. They have seen so many situations before them. There is a lot of expertise there and a lot of expertise available in the marketplace.

I think the key issue—it probably deals largely with the minister and his staff—is getting some kind of agreement mechanism that will allow those judgemental things to be looked at. The things in that fitness test today are like an army medical: you are either going to pass or you are not going to pass. You turn left if you are okay, and you turn right if you are no good. It is very simple. From an administrative point of view, that is what administration people like, but it is not that simple. There is no question that the expertise and the knowledge is there. It is not expensive to maintain. Most of the structure is there today between the OHTB and the enforcement level.

Mrs. Marland: As to specifics, you are suggesting we should be looking to our own staff to develop a more stringent criteria for fitness and ways of evaluating it.

Mr. Baker: Yes. The initial evaluation I feel has to be left in the hands of the OHTB. That is the most knowledgeable body you have in administering the system. They have lots of other resources to draw on.

Mrs. Marland: Would you see, perhaps, the competency certificate being more directly tied to the fitness evaluation?

Mr. Baker: Yes. What you are doing when you issue a public commercial vehicle licence, in my opinion, is not simply giving a person a piece of paper to operate; you are giving him a mandate for his business. It is like McDonald's giving a franchise. You effectively are giving him a franchise to run a business of a certain nature. McDonald's gives you a franchise for one market area; that is the market area you work in and they measure how you do in that market area. If you do not perform, you lose your franchise.

I think a PCV licence has to be exactly the same thing. It is given to do a specific job. You show you can do the job. If you do not do the job, you lose it. You do not lose it simply because you have too many trucks on the road with safety problems; it is the whole thing.

If you call and apply for an LTL truckload application and you cannot demonstrate after a period of time that you are running an LTL business, then you are out of business. It is just like McDonald's. If you run a good store, you can come back and get a franchise for a second store; that is, once you

show you have run the first one properly. I think that is the way the system has to work.

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Mr. Wiseman: I have a lot of sympathy with your first concern. I will not go into what Mr. Wildman mentioned, other than a concern about a receiver of goods in small communities. You mentioned that in the United States it dropped in the number of—I think I have it right—LTL standards. I would be a little concerned that a lot of people out there are thinking that when this comes through, they are going to get goods delivered to their door more cheaply. Although much is said, that is not the case in the United States.

The other thing is that you mentioned you try to service those accounts by having terminals set up at every 75-mile distance. Have you found in the United States that the Bunker Hunts and those people have expanded those maybe to 100-mile or 150-mile terminals, so that instead of getting people like yourself or Taggart delivering to Prescott, Smiths Falls or Perth on a regular daily basis, they may come in twice a week or something like that, so you are paying more for the shipments and it is taking a longer period of time to get them to your door?

Mr. Baker: It is a combination of things. I mentioned the 75-mile radius. That is applicable in southern Ontario with the population density. When you talk to large American carriers, as I do frequently in the United States, the number is approximately a terminal for every quarter of a million population. You are stalled when you get into a metropolitan market area like Chicago; you do not need 25 terminals. It is when you are out in the less densely populated areas.

Mr. Wiseman: Have you seen those go down in order to cut costs?

Mr. Baker: No; increase. What has happened is that because you are now down to eight major operators, they have more business per location than they ever had before as a result of taking out a lot of competition. They can justify putting in the service, and frankly the small guy is never going to touch them. For example, I think Yellow Freight System has 487 terminals now in the United States.

Mr. Wiseman: I guess what I really want to get at is, has the delivery time increased to small shippers since it came in in the United States?

Mr. Baker: No, I do not think there has been a deterioration in service, but I think the small operator, the small businessman is the one who is losing his clout to negotiate because he is dealing with a massive concern. It was a different thing when the guy who hauled his freight was a member of the local Rotary club with him and he could sit down with him and say: "Look, business has been tough for me. Can you do something to help me?" Now he deals with Yellow or Roadway and they say: "Wait a minute. Head office is in Kansas City and we are out in Wyoming or Minnesota. I cannot do anything for you. There are seven layers of management between me and the top." He has lost that kind of personal connection.

Mr. Wiseman: Yesterday, in Windsor, I asked this very question about being able to depreciate your PCV licences. Maybe I was wrong, but I got the impression you could depreciate that all off. You have mentioned it was just 50 per cent. I know it is federal, but this is one area where I think in the

United States, when they did this, the federal government made some adjustments to cover that.

Mr. Baker: We even suggested at different times some kind of capital tax reserve; in other words, whatever the undepreciated amount was, it would be used as a credit if we brought new capital investment here in the province. Instead of paying the sales tax and so forth on whatever that might be, that would be waived, so there would be some compensation to us for the undepreciated amount. You can only depreciate 50 per cent because it is a treated as a goodwill item.

Mr. Wiseman: I was hoping, like Mr. Perkins of Taggart, that perhaps this government would see fit to do as Frank Miller did in the 1980s and take the sales tax off and perhaps lower the provincial tax to at least comply with Quebec. We are paying a lot more sales tax here than they do in Quebec. It is a heck of a lot less in the United States.

Mr. Baker: I can tell you frankly that right now in our international operations, we cannot afford to buy Canadian-made, Ontario-built trailers. It is cheaper for us to go and buy a trailer in the United States. There is a Delaware leasing company. We pay no state tax and no sales tax. We lease it to our Canadian operations via the American company for international use, which is completely legal as long as it stays in international use.

Previously, I used to buy those trailers from Trailmobile or Fruehauf in Brampton, Brantford, Toronto or wherever, but with the tax rates and the fast depreciation and so forth, on every \$1 million worth of capital investment I make in the United States like that, I save \$175,000 over four years.

Mr. Wiseman: I will go on. I just have one on the last thing. When we were here starting a week or so ago, we heard that in the north a lot of the trucks were running 50 per cent empty on the way back. I was really interested—this is the first person, I think, who has come before us and said that if you go above 10 per cent on the backfill, you are losing money. You mentioned your experiences that you try to work for eight per cent.

Mr. Baker: Eight or better.

Mr. Wiseman: I think a lot of people have been thinking in the past too of savings there. If they could backfill them, then that would help to reduce the price that flows to the consumer eventually. Maybe that gap, other than in the north, is not as big as we thought it was. In the central part, if it is eight per cent to 10 per cent, there is not going to be a lot more savings squeezed out of there to go back to the consumer, but maybe in the north there would be. Maybe the north was a bad example to use.

The Vice-Chairman: We will be holding hearings in the Sault. I am sure we will hear.

Mr. Baker: The north is certainly going to be higher than the rest of the province. I do not know how much higher. I suggest you might want to ask that question of some of the other people appearing before you, as to what they consider is a threshold level on empties. The whole industry is fighting to reduce empties, but the problem is your backhaul becomes my headhaul or vice versa. You steal from each other until you finally reach that level.

Mr. Wiseman: We have had a lot of presentations. This is a clear one

and the answers were good. I congratulate you. I could ask you some more questions, but I will not.

The Vice-Chairman: Mr. McGuigan, we have Mr. Reimer to appear before us. To be fair to him and give him time, I ask the members if they could be brief.

Mr. McGuigan: Mr. Baker, you say it is almost impossible to get operating authority in Michigan and you have experience with companies on both sides. Is it equally almost impossible for a Michigan-based company to get operating authority in Michigan?

Mr. Baker: Yes.

Mr. McGuigan: They are treating—

Mr. Baker: They are not discriminating against Canadians. I tried to explain that earlier. They will not draw any distinction. It is just a fact of life that they are not going to issue more authorities within the state until they feel the marketplace has levelled off.

Mr. McGuigan: We heard a number of people talking about the difference between wages in Canada and the United States. One of the presenters yesterday talked about getting good drivers in Michigan for \$5 and \$6 an hour. Is this part of what we are seeing in the breakdown of the union movement in the United States, far more than we are here in Canada?

Mr. Baker: No, I do not know where the \$5 and \$6 guys are, if they are any good. I will reserve on that one.

Mr. McGuigan: We are talking about office people too for \$5 to \$6.

Mr. Baker: Clerical people generally are available at lower cost than they are here in Canada. The benefit structure is a big factor because we have so many more—I am not arguing against this—federally and provincially legislated benefits that do not exist in the United States. That makes a big difference.

Mr. McGuigan: Your answer would be that it is more in government legislation than it is in a difference between unions.

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Mr. Baker: The other thing that is available to the United States is the magic word "minorities." There are a lot of minority people who are reasonably happy to take a job at lower than marketplace simply to get an opportunity to work their way up the ladder. If you can find good minority people, they are available at lower cost. We pay our Michigan-based drivers just around \$10 an hour. By the way, they are Teamsters. We pay our Ontario-based drivers right across in Windsor almost \$13 an hour. If you factor the differential and exchange, they are getting paid the same dollars.

Mr. McGuigan: We have heard you and a number of people talking about sort of a shakeout going on in the industry now. Is there an overcapacity? Have we have overexpanded the trucks during this business expansion? Have we expanded trucks beyond the need? A number of people seem to think there is a great war going on there.

Mr. Baker: I would not say there is an overcapacity. There is an

overappetite. There has been tremendous desire on the part of a lot of companies, and we are certainly one of them, to grow very quickly over the last decade. We have seen growth in companies that we have never thought of before in both Canada and the United States. There is a tremendous appetite for growth and taking over the other person's market, particularly in an unstable market condition. People look at it and say, "That is my chance to either go in and take that market, or if the guy gets weak enough, I buy him." This has been a decade of acquisition, not only in the trucking industry but others.

On rolling stock, 20 per cent of the equipment goes to the junk yard every year. You can adjust that very quickly. If you just simply do not buy new trucks for one year, you reduce the industry's capacity by 20 per cent. That adjustment can be made very quickly.

Mr. McGuigan: The size and so on of these things has been increasing rather dramatically. Just look at the size of the trucks on the road, which brings me to the capacity factor.

Mr. Baker: A lot of the size is aesthetic, you know, fibreglass. It is not really power size. What you have today—and I happen to have a couple of truck dealerships too, so I know that side of the game pretty well—is tremendous improvements in efficiency in equipment. The carriers, again those that have money that have the ability to do it, are upgrading their fleets very quickly to benefit from the better fuel economy and so forth and lower maintenance.

Mr. McGuigan: On the matter of writing off licence value, is that not rather self-defeating? If you are allowed through government income tax and so on to write off the value of a licence, that simply allows you to pay more for a licence.

Mr. Baker: I am talking about licences that were bought under a different regime. Prior to—and I am not talking about anything that happens after, to even pick a date, whenever the turning point is. I am saying that if I invested in a licence in 1978 and that was the only way I could get into that marketplace because the board, via the province, was not issuing any licences, and I had to pay X dollars to get that licence, I have made an investment in my franchise to operate. You are now throwing my franchise agreement away—

Mr. McGuigan: The 1978 purchase would be written off already, would it not?

Mr. Baker: No, because I can only take it down to 50 per cent. You see, it is treated as goodwill. Under tax legislation, it is treated as goodwill. You are only allowed to write five per cent per annum down to 50 per cent of value. The base 50 per cent stays on your books for ever.

Mr. McGuigan: One quick question. The \$175,000 saving on a \$1 million in the United States, is that largely the purchase price of that trailer or the tax on the trailer?

Mr. Baker: That is not a trailer. That is \$1-million worth of assets. About \$50,000 of it will be purchase price. About another \$50,000 will be elimination of sales taxes and the balance will be faster depreciation and better write-offs.

Mr. McGuigan: The big difference is government treatment rather than the actual purchase price.

Mr. Baker: It is taxation and treatment of tax primarily.

Mr. McGuigan: Thank you.

Mr. Chairman: A final short question, Mr. Pouliot.

Mr. Pouliot: Mr. Baker, I too enjoyed your presentation. You seem to be a direct, no-nonsense entrepreneur who obviously knows his craft and knows his business inside out. It is very refreshing and it is certainly not departing from the form of the previous presenters.

I have one very simple question. The government claims that this proposed deregulation bill will create jobs. You employ 1,000 people in the province of Ontario in the companies you represent.

Mr. Baker: Yes.

Mr. Pouliot: What is your answer to that claim? Will deregulation create more jobs, will it stay the same or will there be fewer jobs?

Mr. Baker: As an industry, I do not think it will create any more jobs. The business is there. We may trade business. I may pick up somebody else's business, somebody may pick up mine, but it will not create new business.

Mr. Pouliot: Is the business climate more inviting in the United States? Is it a better place to do business, to operate from?

Mr. Baker: It is an easier place to do business.

Mr. Pouliot: It is something you will contemplate, is it not?

Mr. Baker: Yes. I would not say we have reached our limits in the province of Ontario, but we feel the United States gives us opportunities that we do not have here.

Mr. Chairman: Just before you leave, our counsel from the ministry wanted to offer a few points of clarification.

Ms. Kelch: As the minister is not here, I just wanted to let the committee know a couple of points that you have raised. The ministry perhaps has a slightly different set of facts or a slightly different perspective.

The first is the write-off issue to which you refer. You do mention that the rules are quite different between the American tax system and the Canadian tax system. But I think the committee should be aware that in 1980, in the United States, when deregulation—and I use the word deliberately, Mr. Pouliot—took place, there was in fact a very short period of time for the industry to adjust.

Mr. Baker: Three years.

Ms. Kelch: In Canada, and specifically in Ontario, we have been talking about reform of the trucking regulations for in excess of 10 years. So I think it is important for the committee to know that there is a slight

difference in terms of the period of time that we are talking about, although I do acknowledge that the rules are quite different.

Mr. Baker: I do not have a problem if you want to give it to me over 10 years or three years, just as long as we can get 100 per cent of it.

Mr. Wildman: You are talking about the past 10 years.

Ms. Kelch: Yes, I think that is exactly the point.

Mr. Wildman: In other words, I think you have attempted to adjust by buying a permit in Livonia, Michigan, which is exactly what we are concerned about.

Mr. Chairman: Anything else, Ms. Kelch?

Ms. Kelch: Yes, the employment issue. Mr. Wildman did raise a question of Mr. Baker in terms of exactly what has happened in the United States after deregulation. Our figures—and they do come directly from the Department of Transportation in the United States—show that in that period between 1980 and 1985, just after deregulation in the United States, there was in fact an increase in employment of almost 23 per cent. That is not exactly consistent with the facts that you have put on the table.

Mr. Baker: I would challenge those numbers on a macroeconomic basis, simply because nobody at this stage can factor out the impact of growth in the whole marketplace in the United States. A portion of that percentage of growth is natural growth in the marketplace, realizing that 1980 was not a bumper year; 1985 was certainly a lot stronger year.

I am not sure whether that is a statistic of drivers or total employment.

Ms. Kelch: Total employment.

Mr. Baker: Driver employment has not changed a great deal; the administrative level has diminished.

Ms. Kelch: The figure to which I refer is total employment. I think it is important, as you indicated earlier, to ensure that is what we talk about, because the trucking industry is not purely the drivers, it is a total package.

Mr. Baker: Right, but the economic levels of 1980 versus 1985 are considerably different in gross national product.

Ms. Kelch: But I do not think that changes the point that you put on the table, which is that in fact there has been a decrease in employment in the trucking industry since deregulation.

Mr. Chairman: The question is what cost.

Ms. Kelch: I take issue with your figures, and I think the committee should know that.

Mr. Baker: Let me qualify. I do not think there has been a drop in drivers. It takes one driver to move one truck. We have never found a cheaper way of doing it yet. Where the changes come is in the administrative staff behind that.

Ms. Kelch: How much of that, as you indicate, is attributable to deregulation and how much is attributable to good business practice, which looks for efficiencies?

Mr. Baker: Difficult question.

Ms. Kelch: One final point, just to beg the committee's indulgence, is the issue in terms of the 10 less-than-truckload carriers to which you referred. Again, just a further piece of information. In 1980, the 10 top LTL carriers had almost 42 per cent of the market share.

Mr. Baker: You are talking in the United States?

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Ms. Kelch: Yes. In 1982, that figure had risen to about 48 per cent.

Mr. Baker: Now look at 1987.

Ms. Kelch: I do not have the 1987 figures, but we could look at those figures as well.

Mr. Baker: It was 69 per cent.

Mr. Wildman: Did you say 69 per cent?

Mr. Baker: A recent issue of Commercial Carrier Journal came out listing the top 500 carriers, what their volumes were, what percentage of market they had, and it was 69 per cent. I am not saying it is a government-accurate figure, but it has to be pretty accurate.

Ms. Kelch: I guess for the committee, it would probably be valuable to have the government-accurate figure, and we would be pleased to get that.

Mr. Pouliot: On a point of order, Mr. Chairman: With the highest of respect, it is broadly summarized, but I have to respond to that. If we follow the style, method and approach—and I think it has some validity—then we can assume that if there is a downward turn in the economy next year, following the same philosophy as our dear friend, we will blame deregulation. You cannot have it both ways. Those things have to be meticulous, otherwise they tend to mislead, not deliberately or systematically—I do not think the ministry operates like this, but they leave a set of statistics which remains unchallenged. Therefore their validity I do take with a grain of salt. I believe Mr. Baker; he earns a living at it.

Mr. Chairman: That is an interesting point, but not of order.

Mr. Baker, thank you very much for your appearance before the committee. You can see that you have stimulated some interest among the members and we could go on for a long time, but we must not.

Our next witness is Mr. Reimer from Reimer transport company. I am sorry for the delay, Mr. Reimer. We are pleased you are here and we welcome you to the committee.

REIMER EXPRESS ENTERPRISES LTD.

Mr. Reimer: You have my submission before you, I believe. Perhaps I

will just go through it and elaborate a bit on some of the items. It is not lengthy, so it should not take us too long.

As you will notice, I represent Reimer Express Enterprises Ltd., which is the parent company of a group of Canadian trucking and other transportation services. The parent company is based in Winnipeg, but a number of the subsidiary companies are based in Ontario.

I have listed the companies and services in our group. The location shown is the location at which the general manager of that company resides. Sometimes it is a little hard to tell where a trucking company is headquartered or domiciled, so in indicating the location, it is where the general manager of that particular company or service resides; when I say "resides," he works out of the office at that location.

With the first two, Reimer Express Lines Ltd. and Fast as Flite, which is the expedited division of Reimer Express Lines Ltd., it is Winnipeg; then Inter-City Truck Lines (Canada) Inc., Fleet Express Services, Trans Canada Truck Lines Inc. and Big Freight Systems Inc. are in Mississauga; for Canadian Great Western Express Ltd., the general manager resides in Windsor; Western Canada Express in Concord, Ontario; for Fastpac courier operation, the general manager works out of Mississauga as well.

Our group of companies employs approximately 2,500 people with most of them resident in Canada. About 1,040 of our people reside in Ontario, so Ontario has the largest single group of employees in our companies even though the parent company and my own residence are in Winnipeg.

Our flagship company, Reimer Express Lines Ltd., began serving Ontario in 1952, and in 1985 we purchased two Ontario-based truck lines, namely, Inter-City Truck Lines (Canada) Inc. and Trans Canada Truck Lines Inc. Inter-City Truck Lines and its predecessor companies have been serving the Ontario marketplace for over 100 years, initially by horse and buggy, of course.

Our company has had and continues to have grave doubts about the feasibility of deregulating or reregulating both the Canadian and the Ontario truck transportation industry. We believe that both users and carriers have been well served under the existing system of regulation, both across Canada and in Ontario. While it is by no means perfect, that system tended to provide a reasonable and in many cases an excellent level of service to communities both large and small, with freight rates generally, over a long period of time, rising less than the consumer price index.

Just as a case in point, my good friend Mr. Miclash lives in the community of Kenora, which is served by Reimer Express Lines Ltd. from Winnipeg. The community of Kenora is served on a daily basis by three or four major truck lines, with most of Kenora's daily consumer goods coming from Winnipeg, which is only 120 miles distant from Kenora.

It would be my view that type of service to a community of that size would likely not continue in the long term under a deregulated environment. Kenora would continue to be served, but I do not think to the same degree that it has been in the past 25 years.

While we have grave doubts about the feasibility of the government's action, as embodied in Bill 87 and Bill 88, we nevertheless realize that it would probably be very difficult, as it were, to turn back the clock. In the

light of this, we make the following suggestions which we believe will improve the legislation that is proposed and be beneficial to the people of Ontario.

First, we agree strongly with the position taken by the Ontario Trucking Association and the one that was mentioned by Mr. Baker, as well, that a reciprocity provision be included in Bill 88. As the Ontario Trucking Association has stated, it does not seem fair or reasonable that Ontario's intraprovincial market should be opened to US carriers based in individual US states which continue to be regulated for intrastate purposes.

As the OTA has pointed out, a reciprocity provision would not bar US carriers from Ontario, but would simply allow those carriers from jurisdictions with similar levels of economic regulation on to the faster track with is proposed by Bill 88. Why should Ontario extend a privilege to US truckers from states which continue to be regulated when those states do not allow Ontario truckers the same privilege?

Second, we also agree with the OTA submission that the legislation should be amended so that the Ontario Highway Transport Board would have the power to deny a licence when it is found in a public hearing that the granting of that licence would be significantly detrimental to the public interest.

In this respect, I would go further than the Ontario Trucking Association has gone and suggest that Bill 88 should be amended to remove the word "significantly" before the words "detrimental to the public interest." This would bring the Ontario legislation closer to being in line with the federal legislation already in effect under Bill C-19.

Third, I believe it is true that almost any kind of legislation can be made to work. I believe you will agree with me that it is important that legislation should be fair to all those who are affected by it.

One of the significant problems with the proposed legislation is that, unlike the US experiment with deregulation, there is no provision for compensation to carriers which expend large amounts of money to obtain operating authorities which are now relatively worthless.

This, of course, we have heard about already this morning as well. In our own case, in 1985, we purchased two significant Ontario companies holding broad Ontario intraprovincial authority. Under the proposed legislation, that authority becomes virtually without value.

I believe it is important that this committee recommend to the government of Ontario that motor carriers holding significant Ontario intraprovincial operating rights should be compensated for the loss of the value of that authority. Obviously, we look to the federal government for compensation in regards to the extraprovincial authority.

The illustration I have is similar to what we have already heard about, as well, this morning. Let's suppose that one of us had obtained a franchise from McDonald's to operate a restaurant in a certain area of Ontario, with the realization that no other operator would be allowed to set up within a certain radius of our restaurant. I believe that every one of us would consider it unfair for that protection to be removed without compensation to the operator who had paid a large amount of money for his franchise.

There are many carriers operating in Ontario, including the companies which I represent, which have expended large amounts of money to obtain operating authorities, either through acquisition or through lengthy and

expensive public hearings. We believe it is absolutely essential that such carriers be compensated for the loss of the value of their operating authority.

Listening to the discussion this morning, perhaps there is one bit of elaboration needed. Even if your authority has already been written down, of course, that does not mean that it does not continue to have significant value. It is like a piece of property that you own. On your books it may be worth little because it has been written down over the years. On the market it is worth a lot, especially if it is in downtown Toronto.

So therefore, I view the fact that the operating authorities may not be worth very much on your books as being rather insignificant. It was worth a lot prior to deregulation, so I believe that there has to be some mechanism for compensation. Obviously, the government of Ontario cannot deal with what has happened across Canada under the federal legislation, as in Bill C-19, but I believe it has a responsibility in respect to its own legislation, as in bills 87 and 88.

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Some of you will have seen the article which I attached after my brief was completed. No doubt, many of you saw it in the Toronto Sun this last Saturday. If anybody thinks that the trucking business is easy and that it is easy to make a lot of money, here is a good illustration of what is happening in the trucking industry in Canada.

Many of you are familiar with Route Canada, previously called CN Route, previously called, in Ontario, various names such as Husband Transport, Toronto-Peterborough Transport, etc., over the last many, many years. That company is, according to the reports and according to everything else we hear, clearly in a state of bankruptcy, except it has not quite gone under yet.

The trucking business in Ontario, and indeed across Canada, is very difficult nowadays. There is overcapacity in the marketplace. It is a vital industry to Ontario and to Canada. I believe it needs to be treated fairly and equitably under both federal and provincial legislation.

One of the problems too—and I have not touched on it in my brief; it was alluded to earlier today—is the matter of enforcement. Perhaps some of you remember back in 1960 or so when what used to be called the Belgian Congo became independent. The stories were that a lot of people went from backwoods areas into the capital city to pick up their independence in a box, as it were. Freedom to move has been a little like that. People have heard about freedom to move and today, I tell you, they are out there moving, quite apart from having any operating authority from Ontario or from anywhere else, except perhaps, the exempt commodity one.

There is, in my view, virtually a complete lack of enforcement today in Ontario and across the country when it comes to enforcement of operating authority. Actually, there is no easy answer for it. One of the things I have done over the last 30 years is read a lot of operating authorities, my own and other people's, both the authority we hold from Ontario and across the country.

I am not sure how any OPP officer or other enforcement officer at a scale can enforce operating authority, especially if the fellow has a sheaf of, say, 20 pages, none of which cover the particular item he is handling in that trailer. It is not easy. I do not really have an easy answer but I am just saying that the fact is that there is not any enforcement of operating

authorities today—and I have lots of illustrations of it—in Ontario or, to my knowledge, anywhere else in Canada.

When I say anywhere else in Canada, I am talking about from Quebec to British Columbia because that is the area I am familiar with as to what is actually happening in the marketplace. There are people out there today, many of them, hundreds of them, who are operating without the benefit of an operating authority. They may hold a piece of paper for some exempt commodities but haul virtually anything else.

So while we are talking about deregulation on the road, in fact we already have deregulation to a very large degree, and that is not your fault, it is not my fault but it is just a fact of life. People took the words "freedom to move" seriously, as the people in Zaire did back in 1960 or so, and they jumped the gun on this thing.

That is my presentation. I would be happy to try to answer any questions there might be.

Mr. Chairman: Thank you, Mr. Reimer. Some day I would like to spend a couple of hours in one of those trucking inspection stations just to see what they inspect. It must be extremely difficult to do the job properly with all the potential for abuse that there is.

Mr. Reimer: They can do quite a good job in terms of the technical things like lights, brakes and those sort of things. What they cannot seem to catch, not now or in the past—except in the past, there was a sort of respect for operating authorities, respect for the law even without enforcement. I do not know how many of you recall the days when Mr. Shoniker was the chairman of the Ontario Highway Transport Board.

Mr. Chairman: I certainly do.

Mr. Reimer: I am sure many of you do. Certainly people had respect. We may or may not have liked Mr. Shoniker—some days I liked him, some days I did not—but people certainly had respect for the rules and regulations for the operating authorities in those days. There is no doubt about that.

Interjections.

Mr. Wiseman: —let us get an experience of what happens.

Ms. Kelch: I guess number one, for any of the members of the committee who are interested in being with us at the truck inspection station, the invitation is open. Just let me know and we will arrange it for you.

On the specifics of Mr. Reimer's concern—and Mr. Baker raised this as well—I think it is very important to state two things. Number one, there certainly is enforcement of operating authorities in Ontario, and you will find that there are many carriers who would have the opposite perspective from the two that you have heard this morning in terms of the level of that enforcement.

In fact, our commercial vehicle operator registration system, which currently monitors the compliance rate with the laws of Ontario, will show—and we would be pleased to share some of that information with you—that there are a variety of carriers who are being monitored and enforced against their operating authorities, and they are not consistent with the activities that they are carrying out in the province today. That is part of our concern

in terms of ensuring that they do abide by the rules of the road as well as the rules of economic regulation in the province.

But Mr. Reimer at the same time raises a very important concern for us, and that is that yes, there are an awful lot of existing operating authorities in the province that are extremely complex, exceedingly so, and beyond the point, really, of making an awful lot of "common sense." I think both of the carriers from this morning will be aware that this is one of the major reasons that we have had a process in place over several years now to, in fact, rewrite the licences in the province so that they make more sense and are easier to understand: easier from the point of view of the individual who needs to operate under them but also easier from the enforcement staff's point of view.

But even with that said, the enforcement officers that we have in this province are trained not only on the safety and the inspection responsibilities of their job; they are also trained and are able, although sometimes it is exceedingly difficult, to interpret operating authorities to ensure that an individual is in fact operating legally.

Mr. Reimer: I am sorry, Mr. Chairman, I recognize that the lady is a deputy minister, but I do not know her name.

Ms. Kelch: Margaret Kelch.

Mr. Chairman: Margaret Kelch is the assistant deputy minister. We also have in the room David Hobbs, who is the Deputy Minister of Transportation.

Mr. Reimer: I am not sure if this is proper, but perhaps some time later I can give either one of them some information about some of the people I am aware of who are operating completely outside of their operating authority.

Ms. Kelch: We are always interested in that information, sir.

Mr. Chairman: There have been a number of members who expressed an interest and have some questions. Mr. Smith.

Mr. Smith: I would like you to comment first, I guess, on some of the things I heard down in Windsor yesterday. I got the feeling from one of the groups there that there may almost have been some discrimination in the inspection. It seemed as though they may have been tougher on some of our own Ontario trucks, more so than on some of our US trucks.

I wonder if you ever sense that. Do you feel that every inspection station or all the inspectors treat every company the same? Do you feel that there is any variation in the degree of scrutinization?

Mr. Reimer: I am not personally aware of discrimination as between carriers. I just am aware of the fact that there are numerous people who are operating outside of their operating authority and not being stopped. This is not something that is just happening now; it has happened for a long time, but it has been exacerbated during recent years.

Mr. Smith: Another problem I have from some constituents down in my riding is that they get charged with an overload—overload on an axle; it is not necessarily that the whole truck is overloaded, but one axle may be overloaded. I am not a greatly experienced truck driver, but I did drive for

about six years and I know that a load can shift, some types of loads. I can say soybeans or wheat might. I do not know whether you could shift gravel, but if you had to put the brakes on hard, a load could shift. Do you find that there is too much charging done for just having a little bit too much weight on an axle, that the whole truckload is not overloaded?

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Mr. Reimer: In respect to the examples you gave with bulk commodities, I have not had too much experience in bulk commodities, but rather in general freight, usually LTL. I am not aware of that complaint in our own companies coming about recently. I know in the past we sometimes felt that there was some enforcement which maybe along that line was a little bit ridiculous. We had experiences where we had maybe a three-inch overlay—this does go back to Mr. Shoniker's days, by the way, when nobody would ever notice it unless somebody took a tape measure to it. But somebody did in a certain location and, of course, the result—

Mr. Smith: It is like the curve in the hockey stick.

Mr. Reimer: That is right.

Mr. Smith: If somebody questions you, you are in trouble.

Mr. Reimer: That is right. We had a problem with a particular set of trailers that we purchased, but that is a thing of the past. I suppose it is always good to try to enforce the spirit of the law, more so than the letter of the law, because almost every law is violated technically at some time or other.

Mr. Smith: Just as a final question, I do not know how big you are relative to the largest truckers in Canada, but if this legislation goes ahead as presented, do you see your trucking company buying into the United States market in order to stay in business or not be bought out?

Mr. Reimer: Well, it is very difficult to forecast. I guess we are very much survivalists. We do what we have to do to survive and to grow. We started with our brother driving a truck back in the early 1950s and today we are probably Canada's fourth or fifth largest group of trucking companies. So we have always done what we had to do: regulation, deregulation, bad conditions, good conditions.

We are very thankful that we have been able to grow and prosper in Canada and in Ontario. Certainly we would not rule out moving things to the US if that is what we had to do to survive, but we are very much Canadians and like to do business in Canada. We do have some US operations today. Our intercity operation has terminals in Buffalo, Detroit and Great Falls, Montana. Our trans-Canada operation operates to and from all 48 states. It relates to some degree to truckload services, so we do have US operation now.

Mr. Smith: But from what you read in the regulations or legislation right now, are you anticipating moving a head office to the US?

Mr. Reimer: No.

Mr. Smith: Not at this moment?

Mr. Reimer: No.

Mr. Smith: Thank you.

Mr. Brown: I am interested in your first point about the reciprocal treatment of operating rate applications between states, in looking through where your head offices are, etc. Anyway, the point I am trying to make is, how do we determine where your head office is? Yours, I believe, is in Manitoba.

Mr. Reimer: Reimer Express Enterprises Ltd. is headquartered in Manitoba. That is right.

Mr. Brown: When we are looking at reciprocal agreements with neighbouring states, for example, how do we know where the head office is? For example, they may choose to apply from Delaware or some place, calling that their head office. How would the Legislature and legislation define that, in your view?

Mr. Reimer: I am sure that a way could be found to do that effectively, perhaps where the dominant administrative staff was located, or something along that line. It could be defined, I am sure, in such a way that it would be fair, consistent and equitable to all concerned. I am not saying I know exactly how, but certainly if it is sort of a paper head office, you could go through that to the real head office, I would think.

Mr. Brown: Is that how you would want to define it then, as to where head office is or where the majority of the shareholders are from? What would be the criteria?

Mr. Reimer: I am not sure that I am qualified to answer that. I think normally you would accept where the company said the head office was, but you could look behind that and see if in fact that really was where its head office was or if that was just sort of a paper thing where its lawyer was located. You could ask where—as I did here—I did not necessarily give you technically where the head offices of those firms in our group are, but I gave you where the person who runs it works from, the general manager of each of those companies. Where does the general manager work from? That is a question that could be asked to determine head office.

Mr. Brown: Or, quite conceivably, there could be a head office in Ontario. The ownership would be perhaps Michigan, but there could be a head office in Ontario. Obviously, anybody would need some logistical support in Ontario, no matter what you do, and the general manager could be in Ontario but the ownership could be totally American. Seeing as in intraprovincial trucking you would have to use Canadian trucks and drivers regardless, ownership, I think, would become the issue. Defining that would be extraordinarily difficult, would it not?

Mr. Reimer: I am not sure that you could say its ownership, because you can have a company such as—let's take Canada's second largest truck line, the TNT group. The ownership is in Australia. I do not think I would say that TNT in Canada is headquartered in the US. It has significant head office operations in Canada but it is owned in the United States. I do not think you can go by ownership.

Mr. Pouliot: For years, those of us who live in northern Ontario have been accustomed to seeing your trucks or fleet provide "essential services" on both Highway 11 and Highway 17, so it is certainly a pleasure to have the opportunity of receiving your presentation. I have one simple

question. What do you see happening with the passage of deregulation? What will happen to small communities in northern Ontario?

Mr. Reimer: I tried to give my views on that earlier on when I talked about the town of Kenora, which in northern Ontario terms is not really that small. I am not going to try to turn back the clock here, but my own personal view is that smaller communities will not be served as well as they were in the past over the long term for LTL traffic.

Mr. Pouliot: Would the cost increase?

Mr. Reimer: Costs tend to increase in any case, but I think smaller communities and smaller shippers will likely have steeper increases than larger communities and larger shippers.

Mr. Pouliot: Of course you, at first hand, would appreciate the potential significance of deregulation in regard to northern Ontario. We do not have much alternative. Sometimes our only lifeline in terms of obtaining goods and services is the one trucking company that has been running the service. Thank you.

Mr. Wiseman: I just want to go back to the depreciation again. I suppose truckers are like merchants. They have to borrow some money from time to time. Your licence that you purchased over the years, or the company's or whatever, is on the books. I think Mr. Baker said he had spent something like \$2.5 million over the last number of years. You have probably done something like that yourself.

Now, whether or not that is written down to 50 per cent, the banks, or whatever lending agency you have been borrowing from, have looked at that as an asset. If, all of a sudden, that no longer becomes an asset, then you have to, I think, please the banks and show something in your statements to offset that.

My worry—and we have heard so much about safety and what would happen with some of the truckers who maybe do not keep the rigs in as good a shape—is that the safety of those trucks will go down. Mr. Baker said that he retires about 20 per cent of his fleet every year—I think that was it—but those people might keep them on for a couple of extra years to try and please their lending institutions, whatever they might be—banks, trust companies or whatever. Do you see that as a big problem?

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I use that because there are a lot of dairy people in my area and they have paid a lot for their milk quotas. At one time they let them borrow against that milk quota, because it was something they could keep for retirement to sell and this sort of thing. Now I think the milk marketing board takes about 25 per cent of that to sell to keep the milk marketing board.

Mr. McGuigan: Fifteen.

Mr. Wiseman: Fifteen, is it? That is a change that hurt some of them. Basically, what we are doing here is taking that cost, that asset you had, right away from you without letting you depreciate the whole thing.

Do you believe there could be a problem with safety, maybe not in your own firms but in some of the firms you do business against, who would not

depreciate those trucks or get rid of them out of their fleet, but rather would keep them on for maybe another couple of years to satisfy the banks and not make those purchases of new equipment on a yearly basis?

Mr. Reimer: I think that is certainly a possibility. When things get tough, you have to look at every aspect of your operation and what you can do to continue to remain in business. I guess that is why I made the point that I think it is absolutely essential that there should be some compensation for the loss of value of operating authority, both federally and provincially.

Mr. Wiseman: Mr. Baker mentioned his backhauls are about eight per cent; that is what he tries to strive for. If they go over 10 per cent, he is in trouble. Can I ask you, Mr. Reimer, what your percentage of vacant trucks or vacant cargo is in the backhauls?

Mr. Reimer: Yes, I heard Mr. Baker. I think he was referring to his truckload operation at the time as opposed to LTL operations, if I remember correctly, but I do not have the current figures available at this time. In truckload operations, it is certainly very essential that you try to keep your empty miles down. I should not just say just truckload; that is true in truckload and LTL operations.

For example, one of the lanes in our business where we have a great deal of empty capacity on a virtually continuous basis would be the Winnipeg and Regina lane, if your headhaul is from Winnipeg to Regina, your return haul is from Regina to Winnipeg and there is not very much coming eastward on that lane. In that case, you would have much more than eight per cent empty capacity.

There are other lanes where you have a very good balance. In our own system, Toronto-Winnipeg has been a lane that has been reasonably well balanced because we have hauled consumer goods westward and things like fresh-hanging meat eastward.

So it varies a great deal, depending upon the part of the country in which you operate, but certainly to keep it down is essential.

Mr. Wiseman: We heard earlier on, a week ago or so—and maybe you heard me mention it—that the backhauls in the north were running about 50 per cent. I do not know whether that was the LTL or the truckload lots, but is that your experience? You are one of the biggest shippers in the north, I imagine.

Mr. Reimer: We do not have an operation in any of our companies to any great degree between southern Ontario and northern Ontario. Most of—

Mr. Wildman: Most go through.

Mr. Reimer: That is right. A lot of our operations are through northern Ontario to and from western Canada.

Mr. Wiseman: I thought maybe when I saw the Mississauga-based ones that you were going north out of there and—

Mr. Reimer: There will be some of that, but it is not a very large part of our total operations. Then we have sort of a local operation between Winnipeg and northwestern Ontario, including Kenora, Dryden and Thunder Bay. In that particular aspect of our operations, the headhaul is the opposite way.

The headhaul is from Winnipeg to Kenora, Dryden and Thunder Bay; the backhaul is coming back from those cities going back to Winnipeg. There you can have times when you may have very little backhaul go out of Dryden, for example. You have paper going back to Winnipeg.

Mr. Wiseman: We were told, I think, that it could be a good saving there to the people in the north because of 50 per cent going back with nothing or going one way with nothing, whatever it might be. When I heard Mr. Baker say 8 to 10 per cent, I thought there is no margin to improve on that. You would never hit 100 per cent, so I just did not want to build up in my own mind that there is going to be a real good saving to the consumer there if this is not right.

Mr. Reimer: In a sense, in a market like that, where there is a lack of backhaul, the potential problems of deregulating are greater because if, for instance, the LTL carriers moving LTL into that marketplace from Winnipeg are using this truckload freight going back, and if everybody and anybody can haul that truckload back, that then leaves you without a backhaul coming out of those locations, which then means your headhaul rates have to go up to compensate for that.

Mr. Wildman: I have spent a lot of time driving behind your trucks on Highway 17.

Mr. Reimer: I hope they were not going more than 55.

Mr. Wildman: No, on those hills they were lucky if they were doing 20. I am interested in a couple of issues that you raised particularly. This has been raised with us at other hearings. The first one is reciprocity.

It has been questioned as to how we could do this. I have before me a submission that was made to this committee by the Ontario Trucking Association. On page 6 of that submission, they suggested a possible wording of an amendment that might deal with the issue of reciprocity.

I will not read the whole thing because it is written in legal jargon, but it basically says, "In a hearing to conduct a public interest test, the board shall also determine if the applicant is resident in, or is controlled...by a person...resident in, a jurisdiction wherein the granting of a similar operating authority is dependent on entry criteria that are more onerous," and if so, "...the board shall apply the entry criteria similar to that imposed in such other jurisdiction." You have it there?

Mr. Reimer: I have it.

Mr. Wildman: Without commenting on the wording, but rather on the purpose of it, do you think that that kind of an amendment would deal with your concern about the need for reciprocity?

Mr. Reimer: Yes, I think so. I should have mentioned that when I was questioned about that earlier, but I think that would in my view take care of that matter.

Mr. Wildman: Do you think the current Ontario Highway Transport Board would have the capacity to be able to administer a system like that?

Mr. Reimer: I have no doubt they could.

Mr. Wildman: Do you have any idea of what effect that might have in the US market? Would they see that as unfair to them if an applicant from, say, Michigan were having different rules applied to him for an intra-Ontario licence than a person applying from Ontario because he is basically having Michigan rules applied to him in Ontario?

Mr. Reimer: I cannot see that there would be much grounds for complaint. The answer would simply be that if Michigan applied the same rules to an Ontario trucker, then the same rules would apply to the Michigan trucker in Ontario.

Mr. Wildman: In the other issue you raised, you argued over "significantly" or whether there was a detrimental effect.

On that same page of the Ontario Trucking Association's submission, they recommended another amendment which says, "Where a person requests that the board hold a hearing to conduct a public interest test on the basis that the applicant is resident in, or is controlled in the manner described above...the burden of proof in this regard rests with the person that requests the hearing."

How does that suggestion compare with the current situation in Ontario?

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Mr. Reimer: Give me a moment and I will look at that.

Mr. Wildman: Okay.

Mr. Reimer: It seems to me—I am just looking at this quickly here—that what the OTA is saying there is that if the company applying is from a state in which regulation is stringent, that same type of burden of proof will apply in Ontario, which is really similar to the Ontario system of the past, the public convenience and necessity system, to some degree at least.

Mr. Wildman: I have one other question. I had hoped to ask Mr. Baker about this, but because of time I was not able to. It has been suggested in some of our other hearings that one of the ways trucking companies will survive is by getting more and more into owner-operators; that is, if the margin drops, one way of the company surviving is by shifting some of that loss in margin to the driver. The way you do that is by having him own the truck rather than be employed to drive your truck. Do you see an increase in owner-operators in a period of deregulation in intra-Ontario trucking?

Mr. Reimer: In our own companies, we have both types of drivers, owner-operators as well as employee drivers. It is very hard for larger companies operating in the Ontario marketplace which have say contracts with, say, the Teamsters to change from one method to the other.

Mr. Wildman: I would think it would be.

Mr. Reimer: Whereas it might be desirable from an economic standpoint of the company to do that, it might not be possible.

Mr. Wildman: Certainly, if there were deregulation, there would perhaps be a temptation for many people who would like to be in the trucking

business to suddenly get into the business, and they are going to be searching for business from somebody.

Mr. Reimer: All the new entrants in truckhaul, not all but, say, 99 per cent of new ones, would be operating with owner-operators.

Mr. McGuigan: Mr. Reimer, I have personal troubles in my own mind with you and other people who are bringing up the question of a company being compensated for the loss of value in the operating authority. As Mr. Wiseman has mentioned, in agriculture, to give a sense of the backdrop, we do have quota systems. They are established by government in, I think, five areas, mostly the dairy and poultry areas. Those quotas are very specific—so many dozen eggs, so many birds and so many hectolitres of milk.

Even within that field there are arguments as to the long-term future of that system. The Christian Farmers Federation of Ontario has a view that when you sell from one generation to another and so on, 75 per cent rather than 15 per cent should go back to the board. Even with the present board, if you sell, 15 per cent goes back to the board for new entries. There are different views and philosophies regarding those, the main point being that they are very specific; whereas when you buy an operating authority, and I am certainly not an expert in this, but from what I gather that authority says you have the right to go from town A to B to C and to carry certain numbers, classes of goods, depending on whether you get an A, B or C licence or not.

There is all that combination, but there is no guarantee whatsoever that town A, which is one of your points, is not going to die or is going to increase. A new industry might come to that town and it might be a class you can cover or it might not be the class you can cover. You are very much buying a pig in a poke, in my view, and you must have had experience of seeing how this has changed.

Look what is happening in these new plants that are coming in along Highway 401. A person who happened to have a licence there is getting a bonanza; perhaps someplace else a person who had a licence is looking at an empty bag, so to speak.

My point is that when a person buys an operating authority, he is very much making a business decision with all kinds of risks involved. Just as when you decide to put up a terminal someplace, there are risks involved whether that terminal is going to be successful or not, or if you decide to go with a certain type of vehicle, there are risks involved in that vehicle.

My opinion would be that when you buy, say, another company, most of the real value of that purchase is in the equipment you buy and in the customers that person has, not that customers are loyal, but you are buying a system that is operating. The chances are you are going to pick up most of the business that former company had. The opportunity is there.

You are also buying a competitor. At the same time you are increasing your business, you are not increasing your overhead by a great deal. The same head office, the same executives and so on can largely carry the increased operation.

My contention would be that most of that value is in the operation, not in a piece of paper. I have not heard anything to convince me that it is in

the piece of paper; or if it is in the piece of paper, then you made a bad business decision.

Mr. Reimer: Did you wish me to comment?

Mr. McGuigan: Yes.

Mr. Reimer: There is no doubt that when you buy another trucking company, certainly the operating authority is not the only asset you are buying. In the past, that was a very important asset, nevertheless, but there is no way I would suggest that we or anybody else should be compensated for those assets that have nothing to do with the operating authority.

I am suggesting, though, that for the operating authority, which had the greater or lesser value, depending on the size of the community and the traffic lane, there should be some recognition of the fact that value is being removed, just as the farmer with the quota is losing. The birds are not being taken away from him, but if the quota were, he would say that was pretty serious and he would want to be compensated.

My view is that to change the rules is certainly the prerogative of this government and the government of Canada. Rules have to be changed from time to time, and I have no argument with that. However, when that happens, I believe that those who have grown up, if you like, under a different set of rules need to be treated equitably; otherwise, they are on an unfair footing with those new entrants who are coming into the business.

Mr. McGuigan: I would agree with you under the old regime, but as you stated yourself, because of the almost near impossibility of making these road enforcements, in effect, we are in deregulation now. We have figures, although I do not have them at the tip of my tongue, to show that intercompany transport is increasing. It has become profitable for people to do their own transporting.

Mr. Reimer: Private trucking.

Mr. McGuigan: Yes, private trucking is increasing. It was taking away from you. Also, the broker business and the various ramifications of that, I gather, are kind of endless. There are even people out there who simply go and buy a truck and do not have any operating authority or even any pretence of an operating authority. They are absolutely illegal. There are some of those out there. In effect, we are pretty doggone close today to having no regulation whatsoever or very close to being deregulated.

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Mr. Reimer: I agree, but that has happened because of the fact that people knew that this bill and Bills C-18 and C-19 federally were coming. So yes, some people grabbed their independence before the time. That is quite true, but that does not change the basic point I make that those who have already lost some of the value of their operating authority and those who are going to lose more should be compensated for that loss.

Mr. Wildman: I was thinking in terms of an analogy with agriculture in the dairy industry. When a farmer purchases a dairy operation, the asset relates to the land, the buildings, the equipment, the cattle and so on, but also it is significant what the quota is.

Mr. McGuigan: The quota is absolute. That was my point. It is not flexible.

Mr. Wildman: So when you purchase a trucking firm, certainly you are buying the trucks, the equipment, the office equipment and probably a lot of the customers in a sense. What has largely affected the value of that asset in the past has been what that trucking firm was licensed to do. Is that not the case?

Mr. Reimer: That is correct. Whether it was through purchase or through application, in both cases, we expended a considerable amount of money to obtain that operating authority.

Mr. McGuigan: Along the same lines, my memory goes back to a conversation I had with a friend of mine, I suppose 20 years ago. He was a large tobacco grower and he was saying to me: "My quota is worth \$1 million. What is your advice? What should I do with it?" Not that I was any authority, but he asked me that question, "What should I do with my \$1-million worth of quota?" I said: "Today your quota is worth \$1 million. By the stroke of a pen tomorrow, it could be worth zero." I am pretty sure he kept hold of it and today it is worth darn near zero. What responsibility does he carry for his own business decision that he did not sell it while it was worth \$1 million?

Mr. Reimer: I think he should have taken your advice.

Mr. McGuigan: And I did it for free.

Mr. Carrothers: I wanted to circle back to the impact on service to northern communities, because there seemed to be an implication that costs might go up and service would decline. I guess I would like to understand how that would happen because my inclination, in looking at this reregulation, would be that the service might even increase. By removing the barriers, by making it easier for people to enter this business and stop this need to buy an expensive operating authority—by the way, your comments on de facto deregulation are probably the best argument I have heard lately as to why this legislation is needed—by removing that cost, by making it easier, you are going to allow smaller players to enter the game.

Since the northern market is a very dispersed one with very small communities to serve, you allow niche players to get in, smaller companies, maybe even operating one or two trucks, where now they could not do it because they could not afford the cost of fighting the battle to get operating authority. In the future, they could and they would be able to find markets that perhaps the big players could not or would not serve. In fact, we might see an increase in service and perhaps costs drop or at least not go up.

I am wondering why you feel my impression is wrong or why that would not happen with this reregulation—ease of entry and smaller players coming into the northern market.

Mr. Reimer: Let's go back to that lane between Winnipeg and northwestern Ontario, between Winnipeg and, say, Kenora. As I said today, there are a number of large national carriers that provide a daily overnight service for all size of shipments on that line, including a 25-pound shipment going to the local grocery store or jeweller from Winnipeg. You are right; there are going to be niche players. Today, on that line, those three or four national carriers not only get the 25-pound shipment, but they also get the 10,000-pound shipment. The niche player is going to come in and is going to

take that 10,000-pound shipment from you, but he will not take that 25-pound shipment from you. That 25-pound shipment is still going to be there for the daily less than truckload large carriers that are serving that market now.

What is going to happen to the costs of ourselves and the other two or three carriers in that marketplace is that they are going to rise when those big shipments leave us because those big shipments are now helping to make it feasible for us to take those small shipments into that marketplace. My view is there is no way that service on that line can get better; it can only go one way, depending on what happens with the niche players. Maybe they will not bother with that line. If so, maybe things will not change too much. But if the niche players come in there, sure, they will take that 10,000-pound shipment that we are now hauling along with the 25-pound shipment, but they will not take the 25-pound shipment. That is still going to be there for Motorways, Lakehead Freightways and ourselves to haul. What will happen is the 10,000-pound shipment will be gone to the niche player.

Mr. Carrothers: Do you not think a company might spring up locally? I am just wondering why someone would not go after that smaller load either. If the rates are slipping up a little bit perhaps, they would surely come in.

Mr. Reimer: How are you going to pick up that 25-pound shipment in a city like Winnipeg? Sure, that smaller niche player, while based in Kenora, Winnipeg, some other point in northern Ontario or Manitoba, can handle that 10,000-pound shipment; he can go right in there with his tractor-trailer and pick it up. For the 25-pound shipment, he has to have an infrastructure in both Winnipeg and Kenora to handle that.

Mr. Wildman: He needs a terminal.

Mr. Reimer: He needs a terminal. He needs pickup trucks, a dispatcher and people to load that freight into that trailer, so it is very complicated. To handle a load of envelopes is very different from handling a load consisting of one 40,000-pound shipment. This is what a lot of people miss.

Mr. Carrothers: Would there be a form of subsidy in the system? If this small shipment is something that someone cannot really economically run, then obviously he is taking moneys from other shipments in order to service it. Is that what you are saying is common?

Mr. Reimer: There would certainly be a degree of cross-subsidization today, as was alluded to earlier by Mr. Baker, I believe. There is a certain amount of cross-subsidization today in the marketplace where the smaller shipments are being supported to some degree by the larger, more economical shipments. But the larger, more economical shipments, the ones of the regulated LTL carrier, if you like, of the past are the ones that he is susceptible to losing. He will not lose the small ones because they are hard to handle—the 25-pound shipment. If you send a Teamster where the costs are, say, \$20 an hour to pick up a shipment like that in a city the size of Winnipeg or Toronto, just think of the tremendous cost. Most of the shipments you would probably lose money on, but you could have the 10,000-pound and 5,000-pound shipments to sort of help cross-subsidize those shipments.

To handle, let's say, a 50-pound shipment from Toronto to Winnipeg is a fantastically expensive proposition, not because of the line-haul costs—because once you get it into the trailer the costs per unit are no more than the 40,000-one, but because of the tremendous cost of handling that in a

metropolitan area like Toronto and to some degree a metropolitan area like Winnipeg. There is tremendous cost at both ends.

Mr. Carrothers: Is there not already a company up there serving that market, Manitoulin or something?

Mr. Wildman: Manitoulin Transport.

Mr. Carrothers: I am just wondering why life would even change for them. If it is such a difficult market, maybe things will stay exactly the same for them.

Mr. Reimer: Yes. I was not thinking about the Manitoulin operation from Toronto to the Manitoulin area. Manitoulin, of course, is a pretty good size carrier by now. The best illustration I can give is the one I used between Winnipeg and northwestern Ontario, which I happen to be familiar with.

Mr. Wildman: Manitoulin operates mostly in the northeast.

Mr. Reimer: Yes. Manitoulin is not in the northwest. It is not in the Thunder Bay area, which I was alluding to.

Mr. Wildman: It is the same distance to Thunder Bay from where Manitoulin is as it is from Manitoulin to Toronto.

Mr. Carrothers: It just seemed that market would not necessarily be well served under the type of situation we have now either.

Mr. Reimer: That market is tremendously well served today. The northwestern Ontario market is tremendously well served today by trucking companies. It has been very nicely served since trucking came into its own in that area in the mid-1950s. A small receiver of goods in that area has received tremendous service, and does.

Mr. Carrothers: And that is going to change now?

Mr. Reimer: I am not a prophet. I know it will not get better; I suspect it may get worse.

Mr. Carrothers: Thank you.

Mr. Chairman: Mr. Reimer, thank you very much for appearing before the committee. We appreciate your appearance here.

Mr. Reimer: Thank you very much.

Mr. Chairman: Say hello to Winnipeg for us. We commence again at two o'clock with the Grocery Products Manufacturers of Canada.

The committee recessed at 12:21 p.m.

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STANDING COMMITTEE ON RESOURCES DEVELOPMENT

ONTARIO HIGHWAY TRANSPORT BOARD AMENDMENT ACT
TRUCK TRANSPORTATION ACT

WEDNESDAY, AUGUST 31, 1988

Afternoon Sitting



STANDING COMMITTEE ON RESOURCES DEVELOPMENT

CHAIRMAN: Laughren, Floyd (Nickel Belt NDP)

VICE-CHAIRMAN: Wildman, Bud (Algoma NDP)

Brown, Michael A. (Algoma-Manitoulin L)

Collins, Shirley (Wentworth East L)

Leone, Laureano (Downsview L)

Marland, Margaret (Mississauga South PC)

McGuigan, James F. (Essex-Kent L)

McClash, Frank (Kenora L)

Miller, Gordon I. (Norfolk L)

Pouliot, Gilles (Lake Nipigon NDP)

Wiseman, Douglas J. (Lanark-Renfrew PC)

Substitutions:

Carrothers, Douglas A. (Oakville South L) for Mr. Leone

Smith, David W. (Lambton L) for Mr. Miller

Clerk: Mellor, Lynn

Staff:

Richmond, Jerry M., Research Officer, Legislative Research Service

Witnesses:

From the Ministry of Transportation:

Kelch, Margaret, Acting Deputy Minister and Assistant Deputy Minister, Safety and Regulation

From the Grocery Products Manufacturers of Canada:

Jobe, Paul

Armstrong, David, Director of Systems and Finance

From the Ontario Shippers' Coalition:

Johnston, Ken, Inco Ltd.

Armitage, Martyn, Canada Packers Inc.

Burns, Ross, Novacor Chemicals Ltd.

From Al's Cartage Ltd.:

Frohlich, Howard, Secretary-Treasurer

From J. E. Transports:

Bennett, Ted, President

From MacKinnon Transport Ltd.:

MacKinnon, William L., President and General Manager

AFTERNOON SITTING

The committee resumed at 2:09 p.m.

Mr. Chairman: The standing committee on resources development will come to order as we continue our look at the transportation bills. We have a full agenda this afternoon. First up with us are the Grocery Products Manufacturers of Canada. Mr. Armstrong and Mr. Jobe are here and are going to take us through their presentation. Welcome to the committee.

GROCERY PRODUCTS MANUFACTURERS OF CANADA

Mr. Jobe: Rather than take up your valuable time with a word-by-word review of the presentation, I have shortened it down to a philosophy. If you will bear with me, I will make it rather short and to the point, our feeling from the association.

My name is Paul Jobe and I am director of logistics for the Quaker Oats Co. of Canada Ltd. I am here this afternoon with David Armstrong, the director of systems and finance for the Grocery Products Manufacturers, representing the same. We are here to urge the committee to recommend the passage of Bill 87, An Act to amend the Ontario Highway Transport Board Act, and Bill 88, An Act to regulate Truck Transportation.

It has been said that these bills most directly affect the trucking industry. This statement is misleading at best, for it suggests that no one else is directly affected and that those who are indirectly affected are of small numbers and will receive only a ricochet effect.

The Grocery Products Manufacturers of Canada is a national association of major food, nonalcoholic beverages and other grocery product manufacturing companies. The grocery industry is the largest of all manufacturing industries in Canada and provides direct employment to over 250,000 Canadians, of whom 40 per cent are located in Ontario.

The GPMC acts as the leading voice of the industry and convenes a wide range of expert committees and councils covering many aspects of the grocery product manufacturing industry. Within the GPMC, the transport and distribution council is charged with the responsibility of working towards a more efficient transportation industry on behalf of the members of the GPMC. The council is composed of senior physical distribution members of our member companies, representing more than 20 distinct product sectors within our industry.

The grocery industry itself will have over \$50 billion in sales in 1988, with 40 per cent of the manufacturing activity and sales taking place in Ontario. Some 70 per cent of all the products manufactured by GPMC members move to retail outlets by truck at an annual cost of over \$2.5 billion. Many of our member firms have private trucking operations of their own, ranging from very large to very small fleets. Our members are engaged in a combination of private trucking and common carrier trucking and as such are direct recipients of this proposed legislation.

It is our view that the proposed legislation will foster innovation, competition, productivity and enhancement in the Ontario trucking scene. It will force shippers, as well as transport companies, to improve upon their own transportation logistics.

This legislation will encourage carriers to make fundamental changes, to become more innovative and to learn more about their customers' business as well as their own. New players will appear on the scene, along with new philosophies, pricing and innovation, along with better customer service. There will be no more letting the system absorb the unnecessary inefficiencies on both sides. Prices may decrease in some areas and increase in others, but eventually the supply and demand will determine the rates in a deregulated industry.

This legislation, when passed, will clean up the chaos that exists in the trucking industry within Ontario today. This legislation, when passed, will increase the safety of not only the truckers on the road but the public as well. This legislation, when passed, will enhance the industry, the employment and the commerce within the province of Ontario.

This legislation, if not passed after years of consultation between truckers, shippers and government, will leave us in an antiquated system with our hands tied by shortsightedness, anticompetitiveness and fear. It will leave us there until such time as we will be talking about the legislation of spaceships.

Mr. Chairman: A couple of members have indicated an interest already. Mr. Pouliot.

Mr. Pouliot: Welcome to the committee, sir. You have mentioned that failing to enact the bill, if the bill fails to become law—and we have very, very little fear. As you well know, a number make a living at it. Our position is one of extreme minority. One could say, without catastrophizing, that we are under siege and the logic that we bring forth sometimes is not heard with the extreme majority that we have to suffer and be burdened with.

The present system of transportation, of trucking: would you term it as being good? Your goods are delivered on time. Are you satisfied with the people you meet in the trucking industry at the present time?

Mr. Jobe: Totally, as a whole? No. I think the trucking industry has become better, will become a lot better and we will see some people out of the trucking business who are in the trucking business now because they are not as good as they should be.

Mr. Pouliot: Would your firm be somewhat familiar with the safety system in Ontario as it applies to the people who—

Mr. Jobe: Somewhat familiar. I must say to you that we are in the food business rather than the trucking business, but we are familiar with that to the extent that before we deal with a firm, we make sure that its trucks are in good order. Yes.

Mr. Pouliot: Therefore, you would be aware of the standards and the enforcement by the Ministry of Transportation, for instance, monitoring?

Mr. Jobe: I am.

Mr. Pouliot: They are doing a fairly good job at the present time, are they not, under the safety legislation?

Mr. Jobe: Under the safety legislation, but as I said, the trucking industry, from my opinion, is in a chaotic situation in Ontario. Along with safety, there are other aspects of that.

Mr. Pouliot: So really, in terms of safety, a lot is left to be desired. It could be improved upon.

Mr. Jobe: I do not think I am totally qualified to make that statement.

Mr. Pouliot: No, you are quite right. More trucker competition supposedly will bring in more people, and the ministry, by the accounts of some experts, is saying that it has some difficulty monitoring compliance, enforcing safety as it now stands. Judging by the the California experience, when more players entered the game, it did not become safer by virtue and reason of having more competition, more people in the game. Safety was compromised and the monitoring of compliance by the authorities was more difficult because of the numbers game alone and the rapid changes.

Mr. Armstrong: Perhaps I could answer that in part by simply saying that trucking is an implied demand situation. There are only so many goods out there to be shipped. I do not see the number of trucks increasing on the road, other than through expanded business, unless they are going to steal more business from the railroads because they become more efficient; then there may be some expansion.

But there is not going to be that much expansion, and I think the safety aspect within these bills is going to be much improved because the ministry now has some additional areas where it can look at it. If you go through the various levels, there is lots of opportunity there to be more effective in the safety area, and this is what we want to happen.

Mr. Pouliot: Perhaps more than any shipper, you must deal with tremendous volumes.

Mr. Probst: We do.

Mr. Pouliot: So your shipping costs form an important component of your overall expenditures.

Mr. Probst: They certainly do.

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Mr. Pouliot: With deregulation, you could see an enhancement, more competitive pricing policies, and you would have a better chance to bid?

Mr. Jobe: I think with deregulation we will see certain forms in pricing drop. With deregulation, I believe we are going to see carriers come in that will give better service to certain areas. With deregulation, I believe those shippers that are, if you will, good at management are not going to see a major reduction in their rates, but I do see shippers that have less clout than we big companies now have receiving better rates.

Mr. Pouliot: My last question: As an investor, I could perhaps see a better return on investment by virtue of savings and as a consumer I could end up getting value for money?

Mr. Jobe: I think there is no question about that.

Mr. Pouliot: So you have no hesitation about upsetting the apple cart; that regulation was there for a reason and it has worked relatively well over the years?

Mr. Jobe: Regulation was brought in to look after a fledgling trucking industry at a time when it was needed. Right now, trucks have overtaken rail transportation by a long way. The facts are in the business depending on what you look at. I have seen those facts and the rail business is going down and the trucking business is going up. Yet we are sitting there with protected trucking firms with legislation that is well outdated.

Mr. Reimer made a statement this morning about somebody who stopped at a scale with 20 pages of commodities and how one would find the one that was not on there. I would suggest that if we have a trucker stopped at a scale with 20 pages of commodities and we are trying to find one box of combs so that he cannot ship that, we do have a problem with our trucking legislation.

Mr. Pouliot: So you are a strong believer—and why not—that the marketplace always chooses better and that inevitably things will come out, even with mergers and takeovers?

Mr. Jobe: I have a strong faith in the Canadian people as entrepreneurs.

Mr. Wiseman: You mentioned that 70 per cent of your goods go by transport.

Mr. Jobe: Yes.

Mr. Wiseman: I notice the names and the faces on here, and the companies—I believe that is what you represent.

Mr. Jobe: Yes, that is the board of directors.

Mr. Wiseman: Some of you own the trailers and you have somebody drawing those for you. With a tractor, could you tell me what percentage of that 70 per cent your companies either own or get someone to haul for them, with Canada Packers, or whatever it is, on the side of the truck?

If I were in your business, I would not want to try to get out of the trucking business the more competition I got, because it must cost you a lot of dough to be in a business you may be partly familiar with but not as familiar as someone in the trucking business. You could invest that money in biscuits, more cattle or more meat, and from that aspect you are looking at getting your money out of the trucking business and back into what you know better, the manufacturing part of it. Is that a true statement, that you see it more from that angle as being more profitable to you than actually worrying about the consumer at the other end, but rather your ledgers for the companies you represent?

Mr. Jobe: That is a very interesting question. On the first part, I cannot give you those figures because I do not have them. We are either very large or very small. As a matter of fact, we are a very small operation. Canada Packers would be a very large operation as far as trucks are concerned. But yes, I do see that we want to get out of the trucking business. We are in the food business; we are not in the trucking business. We should leave trucking to people who can do it better.

One thing we are in, and you mentioned it, is the consumer business. You are our customers, you are consumers, and we have to get that product to you. When you go down to buy groceries, when your child wants—we hope he wants—Cap'n Crunch or Muffets to eat and they are not at the store, you do

not wait until tomorrow or the following week when it comes in; you need it then. We need the service of the truckers to get it there. We do not need the type of service that says: "We'll get it there next week or after we cross-dock in Toronto and move it to a cartage firm that has the authorities to go someplace else. Then we'll put it there."

You will find that the majority of the people in the food business who have their own trucks have them for customer service, for the consumer. We would dearly love to have an efficient industry that would get out there and do a better job for us at a reasonable price.

Mr. Wiseman: Would it be safe to say that a reasonable price is a price lower than what you are paying right now so you make your ledgers look better?

Mr. Jobe: Not at all. I will tell you the price I would love to pay—

Mr. Wiseman: Because if you are in that business—some of you are in there now, and quite a number when you look in here and see them—and you cannot give the service to yourselves, calling the shots, hiring the trucks, sometimes owning your own trucks, how in Sam Hill—Do you think the numbers are just going to get so big out there that people will be cutting one another's throats to come in and get your business and it will end up that we will have a real slaughter of the trucking industry?

Mr. Jobe: I am sorry if I gave the impression—We can service ours well with our trucking operation; there is no question about it. We can go anywhere and—

Mr. Wiseman: You do not want to put the capital out there to maintain that. You would like the private enterpriser to do that at a reduced price.

Mr. Jobe: You asked me what I would like to pay. I will tell you what I would like to pay. I would like to pay the freight rates Mr. Baker quoted this morning. I would love to pay his \$25 less-than-truckload charge. It would be great if we could do that. Unfortunately, I have not seen those.

Mr. Wiseman: I guess the other part I would like to ask—I get small shipments in and I have never found the trucking industry to be in a chaos position, as you said. Can you tell me why you say it is in a chaos position? You are shipping a lot. I am on the other end receiving some of these and I get pretty good service right now.

Mr. Jobe: Why are we in a chaos situation? I would suggest to you that I could go out on Highway 401 now and pull off 20 trucks. Of those, at least five would have no operating authority to do what they are doing.

It is just that we have a lease operation in Ontario that we are not prepared to deal with. If we went to the courts to figure out who had authorities and who did not on leases, we would have a major problem. If we talk about claims in the trucking industry and shippers and what not, we have a problem there. I would think this province is doing a disservice to its trucking industry by not having legislation in place that is enforceable.

I am very confident within the trucking industry. I think there is a great opportunity in the trucking industry. I think that many people, like Reimer's and Canada Transport, are great people. They have a great part to

play in this country and this province, but there are a number of people out there who are not, and we would like to get to them.

Mr. Wiseman: But are you not in a more fortunate position than some small person in that most of you will have someone whose job is to pick and be responsible for reputable truckers, whoever that might be? You can steer around any of those you mentioned who might be out there breaking the law. If they are breaking the law—and I do not think you can lump all the truckers in on that—it is the ministry officials who scrutinize that. They have put out 32 more, something like that, to help and perhaps they will find some more money. They want to do that in the future.

My problem is just that I do not like to see somebody come in and say the trucking business is in chaos when I do not happen to think it is.

Mr. Jobe: Our definition of chaos is quite different, and I am not talking about the safety aspect; I am talking about—

Mr. Wiseman: And I am not on any payroll for any trucking firm.

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Mr. Jobe: I am talking about an innovative aspect. I am talking about people willing to make a move in the trucking business to do things better. Mr. Baker said this morning that he has bought trucking companies in the United States. He is making the move. He is seeing that the legislation is changing. He is seeing that it is a new world out there.

Mr. Reimer talked about his licensing and what not. It is very interesting. This has gone on for 10 years, the legislation process. He is talking about getting full payment for a licence he bought in 1985? I wonder what he paid for it in 1985.

Mr. Wiseman: He was talking about depreciation.

Mr. Jobe: Depreciation. Certainly he did not pay for that licence in 1985 what he would have paid in 1978 when we did not see this coming. But do you see their making the moves all the way down and buying different companies and locating different ways in head offices and administration staff? That is when I am talking about chaos. I am talking about getting into the business where people can be innovative, where we can get management skills in, where we can get people who are willing to make this a better industry, willing to let the competitiveness rise. That is where I am talking about chaos within the situation.

Mr. Carrothers: I will just pick up on something you were saying to Mr. Wiseman. Do I take it, then, that you would foresee, if this legislation went in, that your members would start backing out of the trucking industry and perhaps leave more work for trucking companies to pick up? Is that what you are saying?

Mr. Jobe: I would foresee that. That is my personal opinion, yes.

Mr. Carrothers: What would happen, from your perspective, if this legislation did not go through? I can understand where you feel you might like to get out of that and leave it to others and so on, so there would be some benefit, but if it does not happen, what is it going to mean? Will you be less competitive? Are you are going to have trouble competing in other markets? What difference would it make to you?

Mr. Jobe: To us, we will keep our trucking fleets. We will run our operation the way we will. We will tighten up on certain people. I think that the ones who will be the losers, though, are the ones who will not be able to do that.

Mr. Carrothers: So you would see a definite advantage to those of your members who were able to operate their own trucking fleets if it did not go through?

Mr. Jobe: No, I believe it can be run better than that. I think a trucking firm can run its operation, can do a more efficient operation if it is run properly. That is, again, the gist of what I am coming at. I think you will see a different person—

Mr. Carrothers: I appreciate that that would change, but what if this did not happen, if, in other words, we stayed where we are? There seems to be a trend in which private fleets are growing, where companies—large companies, anyway—do their own shipping because they cannot get the service. They do it themselves.

It would seem to me that if it stayed in the status quo, it would give an advantage to that larger company over the smaller one that could not get access to a competitive trucking service. He were to lose ground to those who were operating their own fleets.

Mr. Jobe: It might seem to be that way; I can understand your reasoning for that. But again I would like to say that our companies would not want to be in that business. That would create a trucking business.

Mr. Carrothers: I appreciate that, but you were talking about the need to get your products on the shelves.

Mr. Jobe: That is why we do have to do that.

Mr. Carrothers: That is going to be your primary drive. If the only way you can do that is to run your own trucks, then you will do that in the grocery business.

Mr. Jobe: Yes, we will do it.

Mr. Carrothers: If you are finding that the trucking industry cannot service you, which is the implication I took from what you were saying, then that is why these fleets are growing.

Mr. Jobe: I would not say "cannot service us." I would say it is my belief that they can service us better; it is my belief that they can be more efficient and less costly.

Mr. Carrothers: If the grocery company is getting into operating its own fleet, it must be doing that for a reason. It would prefer not to be doing it, so it is not getting the service it wants.

Mr. Jobe: I have a very rough time going out of a place in Peterborough to several different areas in the province under the operating authorities that certain trucking companies have without having to take four days to get to somebody in northern Ontario.

Mr. Carrothers: Your answer has been to create your internal trucking firm.

Mr. Jobe: That is the answer, yes.

Mr. Carrothers: That would be what I would do if I were in the position as well. That is why I still think I am seeing an advantage. If this does not happen, you are giving the large grocery companies an advantage over the small, because the large ones can afford to run their own transportation wing.

Mr. Jobe: I think the larger ones would have an advantage.

Mr. Armstrong: Even the smaller ones would operate their own one or two trucks.

Mr. Carrothers: They might start, but they certainly could not do it as well as the larger ones.

Mr. Armstrong: Yes, there are some efficiencies of scale, there is no doubt.

Mr. Carrothers: One aspect of not passing this legislation might be to change the balance of competitiveness within your industry. Is that a fair assumption or have I sort of taken this too far?

Mr. Armstrong: I think you are taking it a little far. I think the truckers are not dumb. They are going to provide a service if they can provide it.

Mr. Carrothers: If they can do it. But there is this problem with operating authorities and whether they can ship to this town or if they cannot ship this good to that town. Maybe they can. But that is the type of—

Mr. Armstrong: One of our smaller members, who, in fact, worked with his local trucking company, put the money in, got them their licences, helped them get their licences through so they could deliver his product. That company has quadrupled its sales in the last 15 years, and that local trucking company is still delivering the stuff. It is working, but it takes a long time. You should not have to go through that system.

Mr. Jobe: That is the type of chaos I am talking about in Ontario in the trucking industry rather than the chaos of safety or rigs falling apart, the chaos of having a layman be able to do what a layman wants to do, to be able to ship a product from here to there without going through two or three trucking companies.

Mr. McGuigan: I have to give a bit of background to my question. To begin, I and a lot of my constituents are growers, shippers and packers of fruits and vegetables to the major chains, somewhat the same position you are in with your grocery product manufacturers. A few years ago there were allegations that there were illegal kickbacks within the industry. I provided the hard evidence that there were kickbacks—this was 1978—and it triggered off an inquiry that cost the government \$500,000.

One of the findings that came out of it was—and it was not illegal—that the chains were operating their wholesale division as a profit centre, so they took seven per cent off my bill or three per cent off somebody else's bill for the privilege of delivering direct to a store, a short distance to the store, instead of going through the central warehouse in Toronto. So they were making a profit regardless of whether the product actually went to the central station and came back again, made that circuit.

It developed that they had a sort of captured market in the distribution system and they used that as a profit centre, because it was not as competitive as the retail end. The retail end was very competitive, with people going from store to store picking out the specials and so on, and the market to the stores was being oversupplied and so on, but behind that they had control over the distribution system. They used a profit centre and it was not illegal.

I and a lot of my constituents see the same thing happening in trucking, because where I live, which is just 12 miles south of Chatham, with the fruit and vegetable industry all along the lake—in fact, it follows the whole lakeshore of Lake Ontario and Lake Erie down to Leamington—now we are pretty well totally cut off from store deliveries. If I had product that I wanted to get into a store in Chatham, which is only 12 miles away, previous to this development of the central warehouse system I had a trucker out in Chatham, Sarnia, Windsor and London and I delivered my products in master containers. I often got the master containers back and reused them instead of sending a brand-new master container to the landfill every time.

That has been cut off, and now if I want to get to Chatham, I have to truck that stuff to Toronto, to the central distribution warehouse. I have heard a lot of people talking about how the fight is really over who gets the deadhaul. Well, I and my neighbours get the deadhaul and we get the discount, because we have gone through their system, so we lose two ways. The customer, it seems to me, loses because instead of my product going 12 miles to Chatham, it goes through 400 miles, 200 to Toronto and 200 back, through a distribution system that is older, and is handled by people who are not as concerned about it, because it is not their own personal product.

It strikes me that there is a profit centre there, and a doggone good one, because the distributor can take that product to Chatham, deliver it and charge public commercial rates to his own factory customer, the retail outlet, and charge him full rate. When the load is empty, they can then nip over to Heinz in Leamington or Wallaceburg or whatever and pick up a load and take it back to Toronto. They get full rates on that trip. They do not have the expense of a sales force. They do not have a collection agency. It would seem to me a doggone good business to be in.

Do any of your manufacturers run into this? Do they have any concerns about this?

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Mr. Jobe: I understand what you are talking about, and from your perspective, certainly I can see the point where you want to run into a store 12 miles away. If we were to take it from a different point of view and take a 40,000-pound truckload of product, we could put conceivably 13 orders on that truck, and if we delivered them store to store to store, that could cost us, say, \$1,300 to do instead of \$300. It is a completely different ball game with the large type. To us, doing the small ones would be very hard to do. To somebody like yourself certainly the concept is a lot better.

Mr. McGuigan: We hear people like yourself and all industry coming in and talking about the efficiency of a system. This morning we heard, "Cut the backhauls down to 8 or 10 per cent." My backhauls are 50 per cent, and the public is bearing that cost.

Mr. Jobe: I completely agree.

Mr. McGuigan: It seems to me that it really does not matter to that big distribution company what the customer finally pays for it, because all of the major chains are working that same system. What does matter to them is that they get two profit centres now. They get the distribution profit centre and they get the trucking profit centre.

I am not convinced that the customer is being all that well served in that sense. Certainly many of the people I represent are not being well served.

Mr. Jobe: I would completely agree. I do think, though, that with this legislation the customer, the consumer, will be much better served.

Mr. McGuigan: Will it make any difference whatsoever to that—

Mr. Jobe: It will, yes. I believe it will.

Mr. McGuigan: In which way?

Mr. Jobe: In which way? I believe we will be able to do it a lot more quickly. We will be able to get to the consumer a lot more quickly, a lot more directly, and we will not have those inefficiencies that are built in in between. Some people like yourself and maybe, I hope, some people like myself and some truckers along the same way will decide we do not need to move freight through three different trucking companies to get to one store.

Mr. McGuigan: Maybe the answer for me and my constituents is to grab some of the backhauls.

Mr. Armstrong: That is possible.

Mr. Jobe: It would be illegal under the present legislation.

Mr. Smith: I think it is following along somewhat with what my colleague Mr. McGuigan has been asking questions on, but I hear the word "efficiency" used in so many different fields and I look at this very impressive, and I would say almost formidable group that you represent. You represent some very large companies there. In fact, I guess I would even venture a guess that a lot of those companies are subsidiaries of American firms.

I am only a little guy. I am from the boonies of Lambton down there—

Mr. Jobe: I am just from Peterborough.

Mr. Smith: —and maybe I cannot play in the same realm as these people, but coming from such a large group represented by you people, it almost tells me that if it is good for you people, then somebody else is going to get hurt. I try to look at things as fairly as I can, but I am wondering whether, in the long run, the consumer will be the beneficiary or whether this large group you represent here is looking at another way to become much more efficient but at the expense of the trucking industry. If I am right—and I think I am right in some cases here; there are some large American firms that own these companies here—are you speaking more for your bosses over there or are you speaking for yourselves here as a Canadian and a pro-Canadian?

Mr. Jobe: I am pro-Canadian. When we talked about the benefit to this group, I think somebody asked me, "Are you going to be a lot more efficient?" I said, "We are not going to be a lot more efficient, as such." We

are pretty efficient now in a lot of the big companies, but a lot of the smaller ones are going to be a lot more efficient. Like yourself, I am just a little guy from Peterborough. I get up in the big city here and I wonder what these lights are here.

When I first came into this area of trucking, I was very surprised—my background is labour relations, personnel—to find I could not go out and hire a trucker just to take my product to wherever I wanted. If somebody called in Windsor, could I just call the neighbourhood trucker and say, "Will you take this product to Windsor because I know you are going down"? He would say: "I can go down to Windsor, but I can take only plastic to Windsor. So I cannot take your food." I was a little bit dismayed about that.

If I were going into Quebec and a customer wanted a delivery and I thought: "That is no problem. I will just hire one of our guys and we will deliver it to him tonight," they would say: "I am sorry. We cannot do that because we do not have authority to move that product. By the way, we have to cross-dock in some place and our people do not work the midnight shift, so we do not want you to do that." Meanwhile, the customer is there.

We can take care of those inefficiencies in a larger company, and we do in a larger company, but how about the little guy who cannot afford to pay the price to get there, to have the smaller trucks, that type of person? I do not think it is fair to say the companies, whether they be American, Canadian or, as somebody said this morning, the Australian TNT—we are not here to talk about foreign ownership of food companies, railways or whatever. We are just saying to you we believe that after 10 years the trucking industry will be a plus to the consumer and it will be a plus to industry in the province at large.

Mr. Smith: But in the same way that some trucks can only carry certain commodities, maybe you are not regulated to the same degree or in the same fashion, but it would be pretty damned hard for me to get into the milk business, for instance, and become a processor of milk as a little guy, too. I think we all have our regulations and our controls, but this is a pretty impressive group that you are speaking for here.

From what I have seen and heard—I have only sat on this committee for a couple of days, but then I have lived for almost 50 years too—it just seems as though the very strong become stronger and as they become more efficient, it takes away from the little guy. I am wondering if that is what is going to happen here; by your agreeing with this legislation so strongly, we are going to lose a lot more truckers than maybe we as legislators would like to see.

Mr. Jobe: That would be tantamount to saying that if I do not support it, then it must be good.

Mr. Armstrong: What we are looking for in Ontario is a level playing field. That is what we hope this legislation will provide.

Mr. Smith: In the trucking industry?

Mr. Armstrong: In the trucking industry for everybody.

Mr. Smith: Do you really believe in the long run the consumer will benefit by the more efficient trucking industry?

Mr. Armstrong: I think so. I cannot see why they would not. If we

can deliver the product for the same price they are paying now, two years from now, because the prices have not gone up as much, it has got to be more efficient.

Mr. Smith: I give my wife more for groceries, if we are talking about groceries—

Mr. Armstrong: So do I.

Mr. Smith: —but I do not know who gets the money. Thank you, Mr. Chairman.

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Mr. Wildman: I am sorry I was late, but I have read your brief and listened to the exchange.

I note in your brief that the whole thrust is that this is part of preparation for free trade with the United States. On pages 2, 5, 9 and 10, basically you say that this is needed because it will help us to deal with free trade.

Mr. Jobe: I do not think that is the thrust of the brief.

Mr. Armstrong: If it happens. We are not sure that free trade is coming.

Mr. Wildman: You do not think it is the thrust of the brief?

Interjection: It is not.

Mr. Wildman: "The immediate passage of these two bills is required as the grocery industry begins to adjust to the new demands of the larger North American market under US-Canada free trade." That is your brief, not mine.

Mr. Armstrong: "Begins to adjust." We have got to be prepared in case it happens.

Mr. Wildman: Okay. I congratulate you for making that clear to the committee. So basically you are seeing this as part of the Ontario government's adjustment and Ontario industries' adjustment to a possible free trade agreement between Canada and the United States.

Mr. Jobe: Categorically no.

Mr. Wildman: No? Then you are in error when you make this statement.

Mr. Jobe: Free trade is part of something that may come up, and we are saying an adjustment will be there; but to say that is the thrust of this, it is not. The thrust of this brief, as we have said, is a more efficient operation within the trucking industry for the consumer, for industry and for the trucking industry.

Mr. Wildman: On page 5 it says:

"As it now stands, many manufacturing sectors of the Canadian industry and to some extent the grocery manufacturing industry, are less competitive

than their counterparts in the US. This noncompetitiveness is a result of differences in scale of operations, agricultural support programs, other nontariff barriers and provincial trade barriers, including conflicting and inconsistent trucking regulations. Bills 87 and 88 will assist our industry to survive in the larger, more competitive North American market that US-Canada free trade will create."

That is your brief.

On page 9 it says, "As Canada moves to freer trade with the United States, Ontario industry must have a competitive trucking industry."

On page 10 it says:

"GPMC's members face, within the next year, the possibility of the free trade agreement with the United States. If this should be the case, transportation efficiencies become a more urgent requirement than ever."

Mr. Jobe: It is a statement.

Mr. Wildman: Exactly. You stand by those statements? You do not deny them?

Mr. Jobe: They are printed there.

Mr. Wildman: All right. So the fact is that you see this as Ontario's contribution to the implementation of free trade.

Mr. Jobe: The fact is not that.

Mr. Pouliot: It is a component of it.

Mr. Wildman: It is a component of the implementation of free trade.

Mr. Jobe: We have a 10-page brief in which free trade is mentioned in certain areas. There are other areas that are—

Mr. Wildman: It lists six in your executive summary, and number six is free trade.

Mr. Jobe: That is part of the executive summary, yes.

Mr. Wildman: Exactly, and you are saying that there are a number of reasons for this. There are six, one of which is free trade.

Interjection: Yes.

Mr. Wildman: So I do not know why you are suddenly trying to say you do not think that.

Mr. Jobe: You said the thrust of this brief was free trade, and I am saying that the thrust of this brief is not free trade. The thrust of this brief is quite categorically not free trade; it is efficiency within trucking legislation. Ten years have gone into this. Two years ago we were not talking about free trade and we were still talking about the same thing within the trucking industry. Five years ago we were still talking about it, and free trade was not mentioned.

Mr. Wildman: Sure, I certainly agree with that. Two years ago this bill was dealt with in this committee and, thank goodness, it was buried.

Now that we have the possibility of a free trade agreement, or freer trade or whatever you want to call it with the United States, basically what you are saying—and I think it is quite correct—is that you have to be more efficient if you are going to compete with United States firms in our market. I certainly understand why you would want to have freer entry into the trucking industry, which may lead to efficiencies, as you put it, or lower rates, which would make it easier for you to compete with US competitors.

Mr. Jobe: You said one thing before, Mr. Wildman: "North American concept." I think that is a very key part too, regardless of free trade, one or the other. You are looking at a North American concept. That is a concern to me. I do not profess to know everything. The trucking legislation may be right or wrong in certain areas. We are not going to have perfect it, but I am really very concerned about the efficiencies. I really do believe that we can have a much more efficient trucking industry. Once that is done we can really pass it on to the consumer. I think it is one of the last frontiers of management structure that can be enhanced.

Mr. Wildman: I would like to give you an opportunity to respond to the comment that has been made before the committee. It was made again this morning. Probably you heard that in the experience of the United States, we have two things happening. One, there was deregulation at the federal level. We still have 43 states that are highly restricted in intrastate trucking, but the experience as testimony before the committee has indicated was that in LTL, initially after 1980 with the federal deregulation there was a great influx into the trucking industry, a lot of firms started and rates declined, which was good for the shipper and ultimately for the consumer.

What has happened now is that we have somewhere in the neighbourhood of eight to 10 carriers carrying about 69 per cent of the goods and rates are starting to climb again. If we have gone from somewhere in the neighbourhood of 150 trucking firms that were in LTL to eight or 10, we have an oligopoly which is not going to be too good for the shippers. Do you have a response to that?

Mr. Jobe: The response to that was interesting this morning listening to figures that were thrown around. We went from 40 per cent to 69 per cent and whatnot. I would be very interested in seeing that 69 per cent. I have no way of knowing whether it is right or wrong to throw it around.

The other interesting aspect was to look at wage rates being cheaper on the northern side of the border. That is very interesting too, because I have just done some research in some other areas that say that is not true.

Mr. Wildman: They did not say wage rates were cheaper on the northern side of the border; they said the opposite. They said, in terms of the exchange rate the per-hour rates are about equal when you take the exchange into account, but the benefit package is much higher on this side of the border.

Mr. Jobe: I include that. Once again I just say that is interesting, but I would say that you have at your disposal the Ministry of Transportation. I would ask them for that information totally.

What I am really saying is that I can throw figures around here—

Mr. Pouliot: One hopes.

Mr. Jobe: What is it? I do not know. These figures that we have given to you in the brief we are prepared to say are okay. I could not even begin to quote everything in the legislation, I guess, like Crosbie, who said he had not read the whole of the free trade pact. I have read all the bills here, but to argue every little one of them, I could not do that, but I would certainly want to substantiate what I have in figures.

Mr. Wildman: Just two other questions. Would you, as a shipper obviously interested in what happens with this legislation, be opposed to the idea of amending the legislation to ensure reciprocity with US states? In other words, the Ontario Highway Transport Board would have the right and the responsibility to apply entry criteria similar to those imposed in other jurisdictions on an applicant who is from that other jurisdiction?

Mr. Jobe: If you will permit me to answer that, I just heard about the reciprocity issue in the last few days, because I have heard several in the last 10 years from the opposite side. Without studying it totally but on superficially looking at it and saying I wonder about that. If we have somebody in the United States, in Michigan for example, and say we are not going to allow any more barbershops in Michigan, so Ontario people cannot go down and open up a barbershop, do we say that all people from Michigan cannot open up barbershops in Ontario? No, it starts to get wide and varied.

The other thing that I do know about this legislation is that it has been stopped for a number of years from one thing to another, from changing government, from a government that proposed legislation once, with a change in government. We have the politics that are being played in here and that is part of the game. What can I say?

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Mr. Pouliot: It was not part of the accord.

Mr. Jobe: I do have a very real concern that this legislation is going to get bogged down again and we are going to try to make it perfect down the line. I would say with reciprocity that you have the means available, through the regulations, through the legislation, to stop those people from coming in. I just briefly looked at it, but let us say Michigan for example. Under the present legislation I think you could allot them one truck. If somebody applies, give them one truck and that would be the end of it. Somebody with a big truck. There are the means available to do it. I think you can take care of that later. I do not think you should hold this legislation up for that. Deal with it someplace else.

Mr. Wildman: The other issue I wanted to raise was Mr. Reimer's comment this morning regarding northern Ontario, since I represent a very large northern constituency with very small communities that are widespread, distant from one another. He indicated and you used the Kenora example. He is transporting goods from Winnipeg into the Kenora market. He said that small northern communities would be less well served. He indicated in Kenora there are four major trucking companies serving it now. It would be left well served because even if you had niche truckers develop, that is small truckers come in, that kind of a trucker was going to ship the large shipments. For instance, the example of a major paper shipment, but he is not going to pick up the very small shipments because he would not have the terminal. He would not have the support operations that a large trucker has. As a result of that,

the large truckers that would continue carrying those shipments would do it less often and at greater cost to the shipper.

Mr. Jobe: I can see that concern of yours. I take the opposite view. I really believe that the northern communities, the smaller communities and the smaller shipper, will be better served by a deregulated environment. I believe that the 25 pound shipment that they talked about picking up by Reimer this morning, that it does not belong with Reimer. It belongs someplace else in a niche.

When I look at a small shipment to someplace now with a large carrier, the worst thing I can do is put it on a large carrier because I know it is going to get tied up in the terminal. I know it is not important to him. But, I think the guys are going to develop in the town and I think they are going to do a good business out of it. That is my feeling.

Mr. Chairman: Mr. Jobe and Mr. Armstrong, thank you very much for your presentation to the committee.

Mr. Armstrong: Thank you. We were pleased to be here.

ONTARIO SHIPPERS' COALITION

Mr. Chairman: The next presentation is from the Ontario Shippers' Coalition. I think Mr. Ken Johnston is the spokesperson. I want you to be nice to Mr. Johnston, he is from the Sudbury area and his company is going to earn about half a billion dollars this year, so be nice to him. Mr. Johnston, we welcome you and your colleagues to the committee.

Mr. Johnston: Thank you, Mr. Chairman, for your gracious welcome. It is not always that people from the north are received so nicely and offered a fire truck to go home with. On behalf of Mr. Wildman, I will take it for him too.

The gentleman with me today is Martyn J. Armitage from Canada Packers Inc. Mr. Armitage is a corporate transportation manager. Martyn is on this side, and the gentleman on my left is Ross Burns from Novacor Chemicals. While his business card calls for him reporting to work in Calgary each and every day, his company does have a plant in Sarnia and, therefore, he is quite familiar with the problems that we encounter in Ontario.

By way of introduction, the Ontario Shippers' Coalition wishes to thank you all for allowing us the opportunity to bring to your attention the views and concerns of its membership on the extremely important subject of Ontario's proposed trucking legislation and its subsequent passage into law.

The coalition's position is that Ontario's trucking legislation, specifically Bill 87, the Ontario Highway Transport Board Amendment Act, 1987, and Bill 88, the Truck Transportation Act, 1987, must be passed without changes in order to move to a more competitive highway transport environment in Ontario.

The OSC is a group of eight industry associations, representing a broad cross-section of resource manufacturing and merchandising interests. The membership includes the Canadian Chemicals Producers' Association, the Canadian Council of Grocery Distributors, the Canadian Electrical Distributors Association, the Canadian Industrial Transportation League, the Grocery Products Manufacturers of Canada, the Ontario Mining Association, the Private

Motor Truck Council of Canada and the Retail Council of Canada. I understand some of these groups have been before you or will be before you. Possibly some of the numbers we use will include some of the numbers they use in their presentations. I would not like to think that our brief bogged down just on the sheer numbers.

Member companies of these diverse and distinct associations are located in all regions of the province. These companies ship bulk resources, processed goods and manufactured products, both domestically and internationally, and when we say internationally, we include the world market as well and not just the United States. Coalition members purchase transportation services in all four modes, those modes being rail, marine, truck and air, and exert a strong presence on intermodalism. However, the dominant mode of transport is definitely highway transportation.

The importance of a competitive and efficient trucking industry to our members is indisputable, especially when you consider that a significant percentage of the coalition's membership is domiciled in Ontario.

It is also important to note that the members of the Ontario Shippers' Coalition contribute significantly to the economic wellbeing and future growth of the province. By modest estimate, the coalition represents well over \$100 billion in sales within Ontario. The contribution that shippers make through employment and other economic benefits to their respective communities must be recognized. In essence, shippers encompass every mine, every factory, every mill and every store in every community in Ontario.

You may be surprised to hear that these shippers own and operate well over 50 per cent of the trucks on Ontario highways. I am talking about the shippers in Ontario. They own and operate well over 50 per cent of the trucks on Ontario highways. This relatively high ratio is a result of the for-hire industry not being able to satisfy all our needs and demands. It is truly expected that if Bill 88 is passed as written, in fact, this same for-hire trucking industry will gain a much greater share of the Ontario market as a more competitive, customer-service-based industry better meets the shippers' needs. Mr. Wiseman, I think that would probably be an answer to one of your questions: What would our position be in the event that this bill was passed?

The trucking environment has been an entry-regulated and protected one to date which has allowed such outdated practices as guaranteed returns on investment and collective price-fixing. Ontario's trucking industry has survived in a traditional world of freight tariffs, rate hearings and, let us not forget, the infamous surcharges. American transportation managers were freed from this when their rail and highway transport industries were deregulated in 1980. That is to say the US government ended the economic regulation of transportation: regulation stipulating who could sell goods or services on the open market and at what price. They did not end safety regulation or stricter engineering regulations for the industry.

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The content of bills 87 and 88 has been the subject of study for close to 12 years. These bills, in addition to Bill 86, the Highway Traffic Amendment Act, 1987, are the culmination of a dozen years of consultation and compromise among government, shippers and carriers. These same bills and predecessor bills have been under legislative scrutiny for the past four years in various forms and went to committee last year prior to the election.

Therefore, it is now time to pass bills 87 and 88 so that they can effectively complement Bill 86, which received third reading and royal assent on June 29, 1988. This long period of consultation and discussion among the various parties has ensured that everyone had the opportunity to detail their specific concerns.

Bill 88 is a relatively straightforward piece of legislation, crafted by a diligent ministry staff. It should be passed as expeditiously as possible and as currently written. The passage of this legislative package will have a strong bearing on the future prosperity of Ontario and Ontario shippers. Those who oppose this legislation or want to alter it represent a very small group of the for-hire trucking industry. The producer companies of Ontario and Ontario consumers cannot and should not be required to subsidize this group of anti-competitive businessmen any longer.

The entire package, bills 86, 87 and 88, represents a cohesive legislative response to the policy objective of reforming trucking legislation in Ontario, begun in 1976. As mentioned previously, Bill 86 has already received royal assent. The arbitrary tinkering with or altering of certain aspects of the remaining bills 87 and 88, in order to satisfy small but vocal vested interests, will seriously impact on the integrity of the whole legislative package and reduce the economic benefits that should flow from necessary new legislation. This, of course, will lead to perpetuation of the status quo, which in turn will hinder the future growth of the Ontario economy.

The time for exhaustive study is over; this has been performed since 1976. Legislative scrutiny has been rigorously applied for the last four years. A further delay will come at a cost to the province's economic vitality and employment. All parties involved must consider carefully whether or not their policy is to continue to give regulatory protection to guarantee the profits of a small number of trucking firms, at the cost of reduced competition and its benefits, and further creation and retention of long-term, stable, well-paying jobs in the manufacturing and natural resource sectors.

On January 1, 1988, deregulation of the Canadian transportation industry formally occurred. In the rail and air modes, the government has moved fairly expeditiously to introduce elements of competition through the introduction of Bill C-18, the National Transportation Act, 1987. In the marine mode, the government did its best to lessen the cartel practices of the conferences through the provision of Bill C-21, the Shipping Conferences Exemption Act, 1987. It is in air cargo transport that the government has achieved the least resistance, perhaps because this is a mode with the fewest vested interests and the least entrenched views.

Turning our attention to trucking, we are confronted with a world of ironies. This comparatively modern mode of transport is the least forward-looking in Ontario. Historically, a curious alliance has developed between the provincial regulators and those resisting change at all cost. On March 26, 1987, provincial representatives got together and convinced the federal government to stall open entry on federally regulated extraprovincial trucking for a five-year period commencing January 1, 1988.

In the federal-provincial struggle over trucking regulation, the new vision of transportation was lost. The emerging belief is that the demand for transportation is derived from the demand for goods at destination. On July 15, 1985, the white paper, *Freedom to Move*, explicitly stated, as a theoretical underpinning, that transportation is a "derived demand."

In other words, the crucial factor is getting the goods to market in the most efficient and cost-effective manner, not how they are transported to their destination. This is a view with which the coalition agrees wholeheartedly.

The full deregulation of trucking, as in the other modes, will foster economic growth and activity in the primary and secondary sectors of Ontario's economy. This heightened economic activity will lead to increased sales which in turn will lead to an increase in employment. More specifically, jobs in mining, processing, manufacturing, retailing and agriculture depend heavily on the premise that goods are shipped to market in the most cost-effective manner.

In the federally regulated modes of transport, the carriers are now concentrating on serving the shippers; that is the supply side and the demand side. The benefits are already being felt by Ontario miners and manufacturers. Let us ensure that these Ontario producers continue to prosper when they use trucks as well as trains.

As the coalition has reiterated previously, we are not happy with section 9 of Bill 88, which proposes a reverse-onus public interest test which will be sunsetted only after five years. The paradox in all of this is that private trucking will continue to flourish with the five-year hiatus, whereas with an unencumbered fitness test—which is fit, willing and able—effective immediately, we would no doubt see a growth in the for-hire business and a reduction in private haulage.

Although we do not agree with the public interest test, period, we none the less would like to see the entry criteria for intraprovincial trucking brought in line with the extraprovincial regulations, the Motor Vehicle Transport Act, 1987. With the MVTA of 1987 having been implemented on January 1, 1988, it is imperative that the provinces adhere to these regulations and bring their intraprovincial legislation into line with the federal legislation. Bill 88 mirrors the federal legislation and we would urge strongly that this remain intact. Rules for entry must be uniform across the country for both intraprovincial trucking and extraprovincial trucking endeavours.

Thus, although we would prefer to see fitness as the only criterion for entry, we can and we will live with Bill 88 as written. This is an example of how shippers have already compromised in the development of this legislation.

The need for uniformity in entry criteria across the different jurisdictions can best be put into perspective by reviewing the weights and dimensions discussions held earlier this year. After the Roads and Transportation Association of Canada produced its study on trucking weights and dimensions, the provinces were able to sit down and come to an agreement on a set of uniform weights and dimensions for Canadian trucking.

In February of this past year, a memorandum of understanding was signed by all the provinces, ushering in a new era of uniformity in weights and dimensions. This same climate of co-operation by the provinces is needed in establishing intraprovincial entry criteria which mirror the federal extraprovincial set of criteria.

Provincial legislation is necessary and must be brought into line with the federal legislation to end the administrative chaos which has reigned at the Ontario Highway Transport Board since January 1988.

Shippers have been part of the discussions leading to the present bills that have gone on since 1976. Whether on their own, as members of the Ontario Shippers' Coalition or its predecessor, the Ontario Consortium on Trucking Reform, they have brought forward their concerns and discussed them with government officials and others in the transportation community.

During this time we have heard many arguments from carriers as to why there should not be open entry into the trucking market. These issues have included a wide range of topics: service to remote communities; cut-throat competition; job loss; safety; free trade and concentration of power; and now, what is being called reciprocity.

Each time, shippers have responded seriously to each issue, only to find each time that the carriers have moved on to a new issue. In the course of the last four to six years, we have come to feel that these many issues, although often important in themselves, are really being raised as red herrings to deflect the debate and delay any substantive progress. The current issue is reciprocity; last summer it was safety and last fall it was free trade. We will address reciprocity; however, we first must note the following, based on our experience.

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We do not expect that reciprocity will be the last issue. Once time has been wasted coming to terms with this issue and it is settled to the carriers' satisfaction or dissatisfaction, we are convinced another will be raised. We suspect it will tax and we will be told that until Ontario truckers are taxed exactly the same as US truckers, there cannot be fair competition and, therefore, we must delay this bill further. If we consider the number of bilateral trade and social issues, the potential list of issues is endless.

All issues affecting Ontario's industry, trade and technology cannot and should not be addressed in legislation governing the safe operation of trucks on its highways.

The Ontario Trucking Association, at this point, says it does not oppose bills 87 and 88, except—and I repeat "except"—for two stated concerns. Shippers are pleased that if these two stated concerns are met, truckers will be totally on side with the new legislation. Let's deal with these issues right now.

The Ontario Trucking Association says the following: "OTA believes that for those carriers who hail from other provinces and states which have a fit, willing and able approach to licensing should be accorded fast-track opportunities in the province of Ontario as per Bill 88. For carriers coming from jurisdictions in which Ontario carriers find it difficult, if not impossible, to get an operating authority, OTA believes the procedures under the present Public Commercial Vehicles Act should remain in place."

The OSC response to that is that this can easily be dealt with in the bill, as written under the provincial interest clause, namely, clause 10(3)(b), and the regulation-making authority of the Lieutenant Governor in Council, namely, section 41. Through the provincial interest clause, the government clearly has sufficient leeway to restrict any applicant who does not serve the public interests of Ontario.

The second issue raised by the OTA is the public interest test. They say: "As written, the Truck Transportation Act would not allow the Ontario

Highway Transport Board to deny the issuance of a licence even if the board found that it was totally contrary to the public interest. Why permit hearings concerning public interest, if there is no possibility for the board to withhold issuance of the licence?"

Again, our response to that is that under clause 10(3)(a) the board can, in the public interest, severely restrict the authority of the licence it is issuing. Arguably, it could restrict the licence to one truck, but as noted above, beyond the usual public interest test, there is the unique provincial interest clause, 10(3)(b), which gives even more specific powers to protect the public of Ontario.

There is also something that is not in the brief. I think there is another section, 36, which makes provision for a review board, an advisory board, and I would suggest that those sections of the proposed act should be taken into consideration and included in our response.

I would like to get quickly on to safety for a minute. Even though we are now in a deregulated environment, all parties—shippers, carriers and governments—across Canada, and especially throughout Ontario, view safety as a very real concern that should be dealt with by objective and nationally consistent guidelines. These concerns, the coalition believes, are being adequately dealt with by the National Safety Code and the National Safety Code Task Force on Enforcement.

In the words of the task force, "The National Safety Code was drafted to ensure that deregulation would not come about at the expense of highway safety." Furthermore, "The regulatory system herein proposed meets the requirements of universality, practicality and efficiency that the National Safety Code demands." Thus, now that the National Safety Code has been almost completely implemented across the nation, the issue of safety, I believe, has been well addressed.

Economic regulation, that is, the bureaucratic control of who can sell a good or service on the open market and at what price, severely restricts the continued growth of the Ontario economy. Open entry to trucking in Ontario introduces normal business competition, within which our members and most other businesses in Ontario must operate.

Whereas coalition members sell their products in the extremely competitive national, international and world markets of the 1980s, when it comes to shipping their products to markets, they find themselves in a regulated transportation environment that is often diametrically opposed to the one in which they sell their products.

To get our products there as efficiently as possible, the coalition adheres to the basic principle of better service through greater competition, and in turn through open entry. In this way, both shippers and carriers are operating on a level field.

In today's market, Ontario industries have to produce goods and compete in selling them in an increasingly global sphere and we need competitive transportation to get our products to those markets efficiently. In order for this to occur, a close partnership between shippers and carriers must develop. This can be best explained through a simple equation: production plus transportation equals the selling price. It is only natural that a competitive

selling price must be achieved through the most efficient and economic production and transportation costs.

On the production side, we have Ontario miners, chemical producers, pulp and paper producers and manufacturers operating with very tight profit margins already. Intense market competition locks in these margins. The result is a very lean and efficient productive sector. It is this very same competition, and hence efficiency, which has been lacking in the transportation section, limiting potential economic growth and job creation.

It goes without saying that overpriced products do not exhibit high consumer preference. Bottom-line calculations rule the day. Naturally, the more economic and more reliable our transportation, the higher will be our sales figures. Higher sales demand greater production, resulting in job creation. To ignore these relationships is to ignore economic growth, certainly a disastrous proposition in this age of increasingly competitive imports.

As shippers, we feel less economic regulation will make our job more challenging, more innovative and will definitely be more rewarding. Competitive provisions included in Ontario's new transportation legislation will ensure the success of innovative, hardworking and well-managed carrier operations. We are confident Ontario truckers can compete. While some carriers might argue that the number of existing trucking licences is evidence of effective competition today, we feel this is simply a situation of overcapacity in a regulated market.

In conclusion, we represent people, and our people work hard to produce a competitive product that will sell. It is as simple as that. We are sometimes appalled that the trucking mystique is almost an industry as old as the railway nostalgia mystique and its black-box theories. Let us now place the valuable service industry that is trucking in its appropriate economic place and get on with developing Ontario, and with continuing and creating jobs.

We commend this legislation to you today and sincerely request that you recommend it overwhelmingly for passage.

Once again, thank you for allowing us to bring this brief to you.

Mr. Chairman: Thank you, Mr. Johnston. Just so you know the intended agenda for the committee, it is to have one more week of public hearings in September, and then when the Legislature comes back in October, our first order of business we intend to be this bill, to determine, to debate whether or not there will be any amendments. We will debate both bills then clause by clause. That is the opportunity for members to make amendments. Then it goes back to the assembly for final reading. That is the intended agenda.

Mr. Johnston: Thank you.

Mr. Chairman: I appreciate the fact that you introduced me to a new word today, "intermodalism." I have to find some way to use that.

Mr. Smith: You certainly have a very complete presentation here. On page 4 you mention that "a significant percentage of the coalition's membership is domiciled in Ontario." What percentage is domiciled in Ontario, or how many have head offices in the United States?

Mr. Johnston: Would it be fair to answer your question by saying that everybody who is part of the coalition does business in Ontario and has a large amount of its business in Ontario? The gentleman on my left has a business card that says, "Calgary, Alberta." It would be pretty hard for me to say what they consider to be the major portion of their business. I cannot give you that number, but it is a large percentage.

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Mr. Smith: Would it be fair to say it is not over 50 per cent, though?

Mr. Johnston: Not over?

Mr. Smith: You have significant, over 40 per cent—

Mr. Johnston: Oh, no, it is over 50 per cent.

Mr. Smith: May I look around and see if anybody else can tell me something?

Mr. Johnston: Sure.

Interjection.

Mr. Johnston: We have never put a number on it; I am sorry. It is a substantial amount.

Mr. Smith: Some of the presenters I have heard have gone into the US market in the last year or are certainly thinking of going, and I just wondered if you too had headquarters over in the United States. But if you do not know—

Mr. Johnston: No, I am sorry. The company I represent has offices and producing facilities around the world, so it would be very difficult for me to put a number even on our own company just off the top of my head.

Mr. Smith: I do not know whether you or any of your group were here this morning and heard the figure of eight companies doing 69 per cent of the less-than-truckload transportation. Would you agree with those figures? I guess what I am coming at is that they deregulated in 1980 over there. I think the statement was made this morning that there were a large number of companies, and then all of a sudden after seven years the numbers are reduced greatly, in my opinion. I guess I am always one who is thinking that we talk about competition, but the less companies there are, in my humble opinion, the less competition there will be in the long run. Is that good or do you see that happening in Ontario?

Mr. Johnston: I am not privy, nor are the gentlemen accompanying me—we are not going to disagree with those numbers. If they have been published, that is fine. There is a tremendous amount of numbers coming out of that deregulated economic environment. I would say that any one of the people who have been here as shippers tends to have a limited number of carriers in any event. There are probably eight major carriers in Ontario, if you want to look. What is your determination of "major"? Do you want to take the top eight? Maybe if you want to look in terms of sales, maybe it is the top four.

I do not quarrel with that number and I do not think it is really absolute in any way.

Mr. Smith: Just one final question: you have on page 8, "Rules for entry must be uniform across the country for both intraprovincial trucking and extraprovincial trucking." I guess I speak on behalf of some truckers; I do not know how many. When you make a statement like that, would it not be fair then to ask that before we give our bill royal assent, truckers can ask the question: "Why should we not have reciprocity with Michigan, New York, Ohio, Illinois? Does that not strike you as a fair question on behalf of some truckers?"

Mr. Johnston: I was a little worried that having appeared here for the second time in seven or eight days, I might be considered a lobbyist—however.

Mr. Pouliot: It is an honourable profession.

Mr. Smith: I did not ask the question and maybe you want to answer it.

Mr. Johnston: You raised reciprocity. I do not know whether I should bring up the question of—I just say, "Get on with it." If you want a little homily from the farm I can give you one, but I say, "Just get on with it." Right things tend to be right and get better or righter. I do not think you can bring the United States, the 50 states into—I do not even know what they are and I do not think anybody here knows what they all are.

Mr. Smith: There are very few that are as open as Ontario is going to become, yet there are none that touch on Ontario.

Mr. Johnston: I know, Mr. Smith, but it is the right thing to do. Let us get on to it and then encourage the others to catch up.

Mr. Smith: Yes, but I do not want to see everybody die in the short term.

Mr. Johnston: I do not think everybody will die. It is the same as two boys called Johnston and Johnson. One had a t in his name and one did not and momma said, "You can't play with any of those Johnsons who don't have a t in their name." That is reciprocity. Do you want to play ball or do you want to—

Mr. Wildman: T-ball.

Mr. Johnston: Yes. Do you want to get out there and play ball, T-ball?

Mr. Smith: You mentioned a level playing field in here. The way I see it, it is not quite level.

Mr. Johnston: I am saying that the legislation we have before us here is the Ontario legislation in response to Canadian legislation or hand in hand with it, and I think we have to get on with it. I think it is progressive, good legislation that is going to bring in a stronger, more useful trucking dimension, and I say, "Let's get on with it." If we have

another nine provinces to contend with, we probably have nine other sets of rules we have to deal with.

For the sake of Mr. Wildman here, because I am sure he has read the newspapers, now they find out that with this thing I raised in our brief today, about our tack on these weights and measures, we cannot get some of the trucks on the ferries. I say: "Keep on going with our tack. Go with it, but let's get the ferries up to date." I say to the Ministry of Transportation, "Just because you have a bridge up in northern Ontario, don't stop us from going across with 144,000 pounds. Get the bloody bridge fixed." This legislation fixes the bridge. Let's get going with it. I really commend it to you, Mr. Smith.

Mr. Smith: I just wish I had as much faith as you, but when I look at the colour of your hair, you are closer to retirement than some of the people I listen to.

Mr. Johnston: Oh, no, I am just in a difficult industry. Mr. Laughren knows how tough it is to come from there.

Mr. Smith: I was not too tough on him, Mr. Chairman.

Mr. Chairman: No, you were fine, Mr. Smith.

Mr. Pouliot: I do not believe for one second, Mr. Wildman, that your future is behind you.

Mr. Wildman: Thank you.

Mr. Pouliot: Seldom do we get the compliment of receiving such a direct brief that really pulls no punches.

I have some difficulty falling asleep at night because of the stress that my competitors put me under—it is going to be our secret; we will not repeat it to anyone—so what I do is very, very exciting. I read corporate reports. I really do. I want to learn about other people, and I want to wish them well in how they do things.

I see on your page 13—you are far too humble—"On the production side, we have Ontario miners, chemical producers, pulp and paper producers and manufacturers operating with very tight profit margins already." What was the price of nickel, both stock and futures, about a year and a half ago? Trust me, I am candid. This question is not a trap. We will get to that later.

Mr. Johnston: I thought Mr. Reid answered this question last week. Did he not do that?

I do not know. If you want to read it into the record, I will probably agree with you.

Mr. Pouliot: We will do this together briefly.

Mr. Chairman: This has some relevance, has it?

Mr. Pouliot: It has a direct relevance to this brief. I did not write this brief.

Mr. Chairman: I am glad to hear that.

Mr. Pouliot: Thank you.

I will tell you what it is. If you go to the paragraph above this, it talks about the equation "production plus transportation equals selling price." I, for one, do not in the least want to discredit your brief, but you are fair game here, Mr. Johnston, because you have answered on behalf of other presenters. You took that liberty and so be it.

The price of nickel went from \$3 a pound to \$10 a pound. So I have a bit of difficulty digesting "production plus transportation equals selling price." I too wish I were younger, sir, but I am not a child. Surely, you cannot use that approach, that style or method, to justify a selling price.

It is what the market will bear in your case. You have control, through your companies, of 85 per cent of the world market for nickel. I think it has gone down substantially since, but every one of those companies has demonstrated ability to be a good corporate citizen and the ability to pay, because they have all had—almost every one of them—a banner year. That is what you told your shareholders at your annual meeting, and you wish—I am quoting your president—more of the same.

You are doing very well indeed. The thing is that to give the other guy a chance to make a living too should be first and foremost in your approach. That is my philosophy.

On page 12, on subsection 10(3), you seem to have sort of a paranoia with the five-year, easing-in law for entry requirements. Surely, you must be aware that under the proposed reverse onus, an objector would have to really do a lot of homework. He would have to prove about the applicant being significantly there for public convenience and necessity.

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What other people, experts in the field, are telling us is that anyone who can file a form—that the granting of a licence will be determined almost solely on their ability to file the form. They are not scared at all by the entry test requirements. In fact, they see it as a nonitem. Some cynics, and I have heard them, even say it is a smokescreen. In terms of stopping someone from being granted a licence, that law has as much clout as Mickey Mouse. It is not relevant.

In fact, I quizzed the ministry this morning, asking that consideration be given in the future to removing the word "significant." At least you would have a fighting chance as an objector to stop someone from getting a licence because we are quite concerned that it is reverse onus as is.

You would know about the price of commodities in the fast-moving world. Is it your experience, by way of my last question, that with deregulation, and it looks as if it is coming through, the big people, in order to get their share of the marketplace, will even offer loss leaders, will undercut so that they can get their foot in the door?

In the world of economics that you have to evaluate on a daily basis, before someone goes down too low, there will be mergers or invitations to merge. If someone is listed and he goes down lower, then he will be ripe for a takeover. Consequently, you end up with fewer players in the marketplace. The

element that makes your argument for competition and for the marketplace, which is competition—that very element is being removed. You end up, because of duplication, because of less need for parallel services, with takeovers and mergers, with fewer jobs providing the same service.

The illusion of lower costs for your goods transportation-wise is only an illusion, because when the cartels and the monopolies that you seem to favour so much here are revived with a passion and a vengeance, they will have the clout of legislation, which will give them the right to exploit.

I would have liked to see a compendium dealing with the other side of the fence, which we are concerned about. With respect, I want to leave that with you as a consideration, that it is not quite that simple. As we move up north, it becomes more complex. There, we have no guarantee that the marketplace will suffice in the need for us to import and export the goods and commodities we are trucking.

Mr. Chairman: You have no answer?

Mr. Johnston: Could you paraphrase for me, Mr. Chairman?

Mr. Carrothers: Could I ask a supplementary?

Mr. Chairman: No. The supplementary is out of order, no matter what it is.

Mr. McGuigan: I wonder if the gentleman would agree with a comment that was made by a friend of mine a few years ago, when I was a lobbyist in addition to being an entrepreneur. He was talking about the inevitability of something coming upon us. I was saying to my friend that while this is inevitable, we might as well accept it and get along with it. His comment came back. He said: "Death is inevitable. No one gets out of this world alive. It is inevitable that we all die." He said, "I do not see very many people rushing forward to meet it."

I wonder if that is not the position of the trucking industry, that it is not rushing forward to meet it. From their perspective, they are taking a pretty good tactic in presenting things as they do. I wonder if you agree that it is a pretty good tactic for them.

Mr. Johnston: Probably, Mr. McGuigan, if you believe what you said, I just have to respect you for it. As far as rushing forward to meet their demise is concerned, I guess the same statement could be made about everything and anything we do in the business world, that there is no such thing as standing still. That goes for your jobs too. There is no standing still. You have to meet the changing—if you do not change, you get left behind. Those are very definitely the people who will very quickly die, because they will dry up and blow away. It is inevitable that you must progress.

Mr. McGuigan: Good answer. In the matter of efficiency, I am drawing on experience. I used to pick up shipments in Detroit for myself. There was a truck terminal there where 100 trucks pulled in, 50 on each side of an oval. They had a little train car that ran the length of this warehouse, and trucks would discharge on one side of this long building, put their LTL parcels on this little train and then go around to the other side where they would grab off their shipments to go into their trucks to go to Saginaw or Flint or wherever.

As shippers, do you see the need of us coming to a point where we will

have joint operations where several companies would come into the same distribution point and make that exchange? I think this whole operation was called Consolidated at the time and I am not sure if it was limited to one company, but it was a marvellous example of how products were distributed and allocated to their destination.

I am wondering if we are not looking, down the road some place—I am trying to do some future-gazing here in talking about this act. From the standpoint of shippers, do you see a need for us to go to joint operations in order to keep Ontario competitive at least cost to the consumer and to create more jobs?

Mr. Johnston: I think probably the three of us have a quick answer to that. I have been in the transportation business all my life. As a kid I saw that happening. That is a few years ago now. It is an evolution and it is surprising. We always talk about "the new thing, the new thing, the new thing," but everything old gets renewed, and it is because we have innovative people looking at it.

Yes, I do see that happening on a greater scale than it already is happening, but Mr. Armitage and Mr. Burns are into business more than I am. I am in the bulk business more than they are. Mr. Armitage may want to quickly answer that question.

Mr. Armitage: You have that type of truck terminal in Alberta now, largely serving the outlying areas where a shipper such as Canada Packers would load one carrier with a substantial number of drops. He would then go into the truck terminal, take off the drops he could not deliver, and they would be shunted through the system and go to the relevant carriers.

The interesting point is that most of the carriers using the truck terminals are very small operators and are very local to the area in which they live. They have a unique insight into what those local shippers need.

I do not see any reason why this legislation in fact would not encourage more of that kind of thing in Ontario. It was stated earlier that some of the northern communities lack a lot of service. This legislation is likely to encourage a small local carrier who intimately knows the local customers. He does not have a huge customer base, but he does not need a huge customer base.

It would provide the level of service to those areas which a company like Canada Packers, for instance, has to supply 750 vehicles of its own to achieve. We are in the food business. We do not want to be in the trucking business, but we are forced into it quite simply because our customers demand the service levels that, we have found through bitter experience in the past, carriers simply cannot supply. Now we have 750 vehicles. I would like to think that was to outlying areas but, unfortunately, it is not. It also applies on the major corridors throughout Canada.

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Mr. McGuigan: And that is only in Alberta?

Mr. Armitage: Yes, there are some different forms of the same kind of thing, I guess you would call it, in other provinces. Within Ontario, of course, you have the shippers' co-operative groups now, where it is kind of in reverse: They are in fact putting their freight together, through a co-operative society or association, to achieve a lesser cost per pound shipped because of the volume.

Mr. Johnston: That is just a polishing of an old system, now that the shippers have got together to do it. We have always had freight forwarders. We have had consolidation, certainly into the north. Mr. Wildman is from the Sault, and I am sure they have consolidation into the Sault, into Algoma Steel. We have it into our plant, where the small carriers or the carriers outside of Toronto use Toronto as the hub. They bring it to a central place in Toronto and the Manitoulines, the Kingsways or the Inter-Citys bring it north. They will do that for Falconbridge's nickel mines as well. That is usually LTL.

They are going into more sophistication. They are going into bulk terminals now. The railways have finally woken up and said, "Maybe we should get into bulk terminals." They will allow truckers to come into their bulk terminals and use them. That is a coming thing. I see one of those in every town and I see maybe one truck freight shed in every town. I cannot see how they can afford to continue to have every motor truck carrier on the highway having his own freight shed. It is just unbelievable. As I say, I had that responsibility 35 years ago. The railways could not make it go and I cannot see how the truckers can make it go. That is why they like to work out of our warehouses, because it is much cheaper for them.

Mr. Burns, did you have a something to say?

Mr. Burns: From a philosophical point of view, the increasingly competitive environment created by this legislation will undoubtedly see the trucking companies doing what they consider necessary to enhance the service they provide to shippers. If the operation of consolidated terminals does that, then that is the way they will go.

I would add a point to your previous question about whether the trucking industry is on the road down to its own demise. I remind you that our brief points out that of the industries we represent, 50 per cent of us operate private trucking organizations. Given the passage of the legislation and the creation of a new environment, a significant percentage of that private trucking operation is likely to go back to the for-hire industry, so the for-hire industry will benefit indeed from the passage of this legislation.

Mr. McGuigan: I was not suggesting they were going through their demise, but in opposing the status quo, they were following that dictum of trying to postpone the inevitable for their own corporate—

Mr. Johnston: In opposing it?

Mr. McGuigan: Yes.

Mr. Johnston: As far as our not doing business with them because they opposed it is concerned?

Mr. McGuigan: No, I just wanted to know because they had a good tactic.

Mr. Johnston: In opposing it?

Mr. McGuigan: As lobbyists, they had a good tactic.

Mr. Johnston: We deal with these truckers, we deal with the carriers every day. We can call the truckers. We can deal with the railways too. We deal with these people every day. They are human beings, just as we are. After

you get to know them for a while, they start to tell you exactly what they want to tell you. They tell you what is on their minds and we tell them what is on our minds too. Certainly, I do not know a trucker today who did not have a licence 10 years ago who is not out there saying: "You've got to protect me against this deregulation. I've got a licence. He's going to have to fight to get his."

But that is not really the issue. We do not want to stop anybody from doing business. What we are saying is we want to open up the entry to it, let the people come in, and the people who are equipped to be in it and should be in it will be in it and stay in it. If the big carriers get out of it, it will be because they have rushed to their own demise. That may be a philosophical answer too.

Somebody talked about a niche here. There is a niche now that is not being filled. With all due respect to the ministry, the R licence is being used to fill a niche for crushed gravel, rock and all that in our mines, broken mine rock. Quite frankly, I have opposed the R licences. I have opposed those right from day one.

That is the one area where probably we would not even have this on the board today if we had opened up the house carriers, as we call them, the D and the R and what used to be the gravel licence, the F. If we had had that opened up and if we had not reacted to the political realities of the time—these little guys cannot afford these hearings. They cannot afford them.

Quite frankly, I cannot afford to have my staff at the hearings. I have said that before this committee before. These are expensive hearings. It is also very difficult for a traffic representative who has never been in a court, has never had a traffic ticket. He is absolutely scared to come before this tribunal some time.

Mr. Brown: Mr. Burns, I am quite interested in the Alberta experience, seeing as Alberta has never had regulations, as I understand it, in the trucking industry. Is that correct?

Mr. Burns: That is correct. The issue of reciprocity as far as the Alberta government is concerned has never been an issue.

Mr. Brown: In the Alberta setting then, what is the experience of the small communities, the rural communities, the northern Alberta communities? Do they get good service? Are the rates competitive? Are the companies relatively Alberta-owned? Is there a large percentage of them?

Mr. Burns: I cannot speak on behalf of the entire province. I am not here representing the Alberta government. I can only speak on behalf of my company and my industry. From what I am aware of, there is no issue in Alberta related to the provision of trucking services to remote communities at competitive cost.

Mr. Brown: What is the safety experience in Alberta?

Mr. Burns: The safety experience in Alberta is very good. There is a good safety record.

Mr. Wiseman: I just wondered, going back to what I asked the gentleman before—you have it in here and you mentioned it to me in the briefs when you were doing it, on page 4—as I understand it, you say that the ones

that are represented by you represent about 50 per cent of the trucks on Ontario roads today.

Do you not really control your own destiny then? What you are saying to us is that you have not been good at controlling the trucks and the shipments yourselves. If you get more truckers into it, they will probably cut one another's throats to get the haulage. You will get, as I said to the others, lower rates that you can pass on to look better in your financial statement at the end of the year.

Really, if you control your trucks and one thing and another, and you are saying that the truckers can run more efficiently, why are you not doing it yourselves and keeping that business and moving the goods to get to the destination that you wanted to in the time frame you wanted?

Everybody is saying that you are getting more trucks out there—deregulating, or whatever you want to call it—and that there is going to be more competition. They are going to get the supplies to the supplier faster; they are going to be on the shelves faster. The consumer is going to buy more. Everybody will do more business.

But it seems to me that if I were sitting in your shoes, where you control that at the present time, really control it, more than you will if the truckers come in and do it, why have you not been doing that? It must be, as businessmen, that you are going to hope that it will be a lot cheaper and maybe at the expense of the trucking industry.

I for one do not want to see our trucking system weakened. If we can strengthen it, that is good. But let's not weaken it any more than the mines or the chemical industry want to be weakened by something the government did adhere to.

Mr. Johnston: In answer to that question, it is a big answer and there are several parts to it. Maybe Mr. Armitage will help me with it. What we said here is that over 50 per cent of the trucks on Ontario highways are privately owned. I would say the large majority of them are on there because the for-hire industry did not serve their needs.

Mr. Wiseman: I misread that then. They are not owned by the group of companies?

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Mr. Johnston: Not a collective group, no. In my case, I do not operate any highway product trucks. I do not have to. I am in Sudbury and I have been able to have a reasonably good matchup with the railways and the truckers. I have a bit of competition going there.

Right now, we talk about service being number one. Service is a given. It is not even on the list any more of requirements of a company. You do not even talk about service; it is a given. You do not deal with people who cannot give you the service. Quite frankly, if they cannot service you, you just do not have them. Maybe you have your own fleet of private vehicles out there. The next thing is the cost. Those are the reasons a lot of trucks on the road today are out there, because of service and cost.

I know that in my own company, we do not want to be in the trucking business. We want to try to get better at what we are doing. We want to try to

be better at mining and processing the ores. The gentlemen who are with me are in the same business, and they do not want to be in the trucking business.

I happen to go with a company that has an internal transportation system; I went with them to operate that because they had to have it. But the people who have to operate on the highway do not want to operate on the highway as businesses; they want to run the packing houses, the chemical companies and what have you. They would rather do that, but if they have to, they will go on the highway. Obviously, a lot of people in Ontario have felt that way in the past and have gone that way.

Mr. Wiseman: In Windsor yesterday—and it worries me with the chemical industry—we were told by pretty near all the delegations that they were worried about safety with chemicals. I am sure it is a great concern to you in that field. We heard last week that one spill, just a minor spill, cost \$1 million to clean up. Not only is the trucker on the hook; because it is your load, if the trucker is not carrying enough insurance, you are eventually on for the balance.

I just wonder if the chemical industry now, when it really controls it or has its own vehicles out there or people it knows have carried its goods for a good number of years and understand hazardous goods—what is to be done if something happens—if it would want to see it wide open to all the carriers who might come in and may not have all the training which those it has at present do.

As this gentleman was saying, I would sooner stay with the company I know can deliver on time, even though it may cost me a bit more in my business. I can trust that he will deliver the goods when I want them; not the fall goods in October but the fall goods in August, so I can sell them for back to school and one thing and another. I imagine it is much the same.

Mr. Johnston: That is what I mean by saying service was a given.

Mr. Wiseman: Yes, but I just wondered about the chemical industry. It has all of us as laypeople scared, seeing some of these chemicals going through our municipalities and everything, to know that maybe there would be some truckers out there who have not followed safety because of the shortcuts they have to take, cuts in rates and this sort of thing. I wonder if the chemical industry would really go along with that.

Mr. Burns: There is no question that the chemical industry is very concerned about transportation of hazardous chemicals. As you know, there are extensive regulations around the transportation of dangerous goods which we must conform to. In fact, most if not all chemical companies have staffs which deal exclusively in that area, monitor the changes in regulations and are there to ensure that regulations are conformed to.

I would also go on to add that we now have the National Safety Code coming into place. In Ontario, you have under Bill 86 commercial vehicle operator's registration which addresses safety and makes sure that carriers are up to speed on safety. In the chemical industry itself, you have our whole proactive program called responsible care, which is designed to look after the handling of hazardous chemicals from cradle to grave, from their creation to their ultimate disposal.

One area in that whole program which is key is the transportation of those commodities. We also have under the responsible care program in our

industry a program to monitor the safety performance of all the carriers we use: Truckers, particularly those who do not meet the chemical industry's safety requirements for transportation, simply will not be used.

All that is to say that we believe, generally speaking, safety is adequately addressed in respect to the transportation of chemicals.

Notwithstanding all that, we would still prefer not to be in the transportation industry. We would prefer to spend our capital on chemical projects of one form or another to create wealth and whatever. We would like to leave the transportation aspects of our business to those who are expert in that area, and we think the for-hire industry can provide those services under this environment.

What the brief says, and I support it from the chemical industry's point of view, is that we would expect to see a decline in the number of private carriers carrying chemical products and the other products represented by the coalition.

Mr. Wiseman: May I ask a quick question? Yesterday they mentioned they were worried that maybe some of the larger companies in Canada that were owned in the United States—and I think I am right in this—may have a fleet of trucks that they own in the United States that they might use for backhauling, taking stuff back to the United States.

I notice here on page 4 that you sell \$100 billion in Ontario, but a lot of that must go to the United States as well. Are they being right to worry that perhaps if one of your firms is owned in the United States and it happens to own a trucking firm, that might be bringing—at the present time they cannot, I understand—in the chemicals that go into the makeup of whatever your products are from the United States and then take the finished product back, thereby cutting out our truckers here in Ontario? Is that a big possibility?

Like the Bunker Hunts, and I know him well and I know he is into a lot of different fields; and I know McCain Foods and everything have—what—40 or is it 400 different companies? They probably own a fleet of trucks as well, but if they can do this, it would cut our truckers out; and it would be legal, because they are able to pick up and go back to their destination across the border as long as they do not stop somewhere.

Mr. Johnston: I do not see why not. What was the example yesterday?

Mr. Wiseman: They were worried, as I understood it, that some of the large American firms that had their mother base in the US and maybe had trucking firms over there that were connected with that mother firm would send those trucks up here and take on the backhaul what our people are currently hauling. They would do it to get a load both ways.

Mr. Johnston: I guess that would come under the association and private ownership 50 per cent rule or 90 per cent rule, if that did indeed apply. We have American carriers that haul into Ontario and take back Ontario products to the United States.

Mr. Wiseman: They are doing that now.

Mr. Johnston: Well, certainly, and they can do that. But as far as the company-owned trucking company, we do not have that experience.

I do not know about you, Ross, whether your company has a transborder operation or do you use—

Mr. Burns: We do not have a private fleet in my company, but we do haul extraprovincially and indeed internationally by the trucking load, and where opportunities exist, we do backhaul. It only makes economic sense for us to do that.

Mr. Johnston: That is in effect now, I think out of Alberta, particularly, the great produce haulers back into Alberta out of California, but we do not—

Mr. Wildman: You said at one point in your presentation, Mr. Johnston, that we should not respond to the vested interests who were in opposition to this legislation, that we should proceed with it.

Mr. Johnston: Yes.

Mr. Wildman: Why should we listen to this vested interest?

Mr. Johnston: Exactly. That is the one thing about the good Lord, he gave us all powers of discrimination, some more so than others, and I have to depend on you to discriminate in that regard.

Mr. Pouliot: We are going to deregulate the mines.

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Mr. Wildman: I would like to ask, as you are in the mining business—coming from northern Ontario I know a little bit about the mining business, certainly not as much as you do—if you would think it appropriate if, hypothetically, we had had restrictions in the past on what kinds of companies could develop mining deposits in northern Ontario, but we decided over a number of years that that was not appropriate and we were not going to have these kinds of restrictions any more, that anybody who was competent in mining and discovered a deposit and wished to develop it because they thought it was economical should be able to do that.

We then had a foreign firm develop a major deposit in northern Ontario, but at the same time, Inco had discovered an economic deposit in the jurisdiction from whence that company originated, but they had regulations which prevented Inco or for that matter anybody from coming in and developing that deposit. Do you think that would be an appropriate approach for the Ontario government to take, if you faced that kind of restriction?

Mr. Johnston: As you singled out Inco, I will talk like Inco. You have to understand that we really sell into the world. Less than five per cent of our nickel product goes into Canada. The rest goes into the United States, Japan and the European market: a considerable amount, believe it or not, into the Japanese market. We have developed facilities in Guatemala, Indonesia, Taiwan and several places. We are worldwide. We have gone into several places.

Pertinent to what you are saying, Brazil is now entertaining nationalist interests and demonstrating it through legislation. They are telling us, "You can be a 49-per-cent shareholder." Our company is very active in central Brazil in the gold business. We are good corporate citizens wherever we go. If 49 per-cent is how much we can own, that is exactly what we will own. I do not think we are going to go to Toronto and say to you people, "Slap an embargo on

those Brazilians and don't let them send any Volkswagens in here." I cannot speak for the company officially—

Mr. Wildman: I understand that.

Mr. Johnston: That is my own feeling. I have not heard the president of our gold division say: "Damn those Brazilians. I am going to Ottawa to get them to countervail some of their stuff." I do not know what they sell into our market; maybe shoes or something like that. I can say that for Inco because that is what I think I heard at Inco. I do not know about these gentlemen.

Mr. Wildman: I understand your position. Basically, you are saying that your company will operate according to the rules in whatever jurisdiction it is working.

Mr. Johnston: Yes.

Mr. Wildman: Obviously that is the case, but what I am asking is that if you were prohibited from entering a certain market, would you think it appropriate for the Ontario government not to have similar protection for you in Ontario and prohibit—

Mr. Johnston: I do not represent my company in that manner, but personally I have been around long enough to have opinions on most things. I would say no. I would go to the trade groups which represent Canada abroad and ask them to start at the highest level to try to intercede. The Japanese market is a classic example and the Chinese market is a classic one.

Mr. Wildman: Okay.

Mr. Johnston: We are not going to get away with anything by saying, "You can't put your products into our market."

Mr. Wildman: I was not talking about trade. I was talking about actually being able to do the business in that jurisdiction. You know what I am talking about. I am talking about reciprocity.

Mr. Johnston: Yes.

Mr. Wildman: The argument has been made by the truckers before us— By the way, I want to remind you that reciprocity, while we may not have heard about it in those terms until recently, is not a new issue with regard to trucking in Ontario. It has been around as long as I have been here, and I have been here 13 years. We have been talking about it for some time and it was an issue long before that with regard to trucking in Ontario and North America.

Anyway, in dealing with reciprocity, you have indicated in your brief that you think that matter can be dealt with by regulation. I want to tell you, as a legislator, that I have real difficulty with leaving things to regulation, because every piece of legislation that we pass around here leads to the passage, then, of regulations for implementation of the legislation, and it is a big mass of regulation that has very little scrutiny by any kind of public body. Technically we are supposed to oversee regulations; we are supposed to have a committee that deals with regulations, or at least we did at one time, and that committee sees a very, very minuscule number of the regulations that are in the books in Ontario. That is true of any democratic

Legislature in the western world as we get more and more complex.

I would think that anyone who is involved with doing business in the current political climate would want to have public scrutiny, as much public scrutiny as possible, over the rules that govern how they can do business. If you want to respond, fine. It is just my view, anyway.

Mr. Johnston: I want to respond only because I just do not want to leave it there. I think there is probably legislation in place—because I think there is legislation in place for everything—under the Business Practices Act or something, if there is such an act, that those people have to come in and meet the standards of doing business in our province or our community or our neighbourhood. It does not matter if they can get into the province; they still have to get into our neighbourhood, because we may not zone the area properly for them. So there are many things that make them come in and become corporate citizens. In fact, a lot of people tend to be as good as we are, maybe a little better. Do we think—

Mr. Wildman: I am just wondering if you felt that it was better to have these kinds of rules dealt with in a public forum, debated back and forth and passed instead of simply dealing with them by regulation, which is basically bureaucrats, legal people getting together, working out how to write it down and having it passed behind the scenes with very little public discussion.

Mr. Johnston: I know you would think me naïve if I said, "Don't have any regulation at all," so I will not say it. All I am saying is that the provisions are there. Somewhere in the acts and regulations of this province or in this country there is provision to screen those people and make them become corporate citizens of this country or this province or this town. All I say is that we only spelled this out the way it is. We think clauses 10(3)(a) and (b) cover the situation. Legally they may not. We have to depend on somebody else's interpretation of it, but we think they do.

We do not want anybody screened out. Quite frankly, we are selling into the world. Maybe the meat packers are selling into a little less of the world than we are, and the chemical people are a little smaller or a little bit bigger in North America. I do not want to speak for them in that respect, but I do honestly feel that we should limit that kind of thing and just make sure that people who do business in this province are doing it responsibly, legally and according to the acts and regulations that are in place.

Mr. Chairman: Thank you, Mr. Wildman. I think Mr. Pouliot—

Mr. Pouliot: Just a very short supplementary with Mr. Johnston. You represent, sir, the pulp and paper producers. Therefore, I would assume that you are basically familiar with the workings of the forest management agreements. They have been in place since 1979. It is a very highly regulated world and it gives companies sole rights on huge pieces of land. Many believe that the pulp and paper industry would be more competitive if those FMAs were deregulated. I was wondering, if you are appearing on behalf of the pulp and paper producers—it says so in your brief—what your views are regarding deregulation of the forest management agreements.

Mr. Johnston: I am sorry, unless the pulp and paper producers or some of their constituent members are part of one of our trade associations, we are not here representing them today, Mr. Pouliot.

Mr. Pouliot: I saw their name on your brief.

Mr. Johnston: I even rushed to see if I had missed it.

Mr. Pouliot: Okay, sure.

Mr. Carrothers: I would like to take us back to the matter at hand, the transportation act, if I could for a moment.

Mr. Chairman: Okay, but not for long.

Mr. Carrothers: Not for long, Mr. Chairman.

Mr. Johnston: I am sorry, which act?

Mr. Carrothers: The transportation acts, Bill 87 and Bill 88, which I thought were the subject of the hearings today. I wanted to ask about market concentration and perhaps get your views. We have had some discussions earlier about the fact that the changes this legislation brings about, the dropping of barriers to entry into this business, would perhaps create some consolidation. We have had, in other hearings, the spectre painted for us that prices may go down and as the numbers of companies in the marketplace get less, then all of a sudden prices will start to go back up.

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It would seem, to me at any rate, that if you have very few barriers to entry, as soon as those prices start skimming back up you will get new players in the market and the prices will be driven back down, that it is in fact only in those situations where you have barriers to entry that a small number of companies can then raise prices and keep them up. I am wondering if that is a point of view you share? I may be wrong in my assumption here.

Mr. Johnston: I think I missed what you were saying, sorry.

Mr. Armitage: If I understand you correctly, certain persons who have spoken on the transportation acts have suggested that the carriers might concentrate, drive down prices enough so they can drive a lot of people out of the business.

Interjection: And control the market and raise prices.

Mr. Armitage: Yes, predatory pricing. Okay. I think the general feeling among shippers is yes, that is quite likely to happen and then prices will start to rise again, but I think you are quite right when you say that the wheel will continue to turn and that more players will come in. I think there are one or two exceptions, but most people who go into the transportation business should be and I think are aware of what their costs are.

Mr. Carrothers: Is it fair to conclude that predatory pricing would have more impact in a market where entry into the business is perhaps controlled by the need to get permits and the long hearings we were hearing about and the difficulty for people to come into the business, that it is more likely to have oligopolistic or monopolistic practices in a marketplace under the present legislation than under the proposed legislation?

Mr. Armitage: Yes.

Mr. Carrothers: I am thinking also of an experience I remember. I do not know if the shippers have had experience, but I remember a number of years ago a company, United Parcel Service, got into the courier service. There was a great hue and cry that they would control the market, drive everybody out and that prices would then rise. As a casual user of couriers, I do not think that has happened, but I am wondering if you have seen evidence that UPS has been able to dominate the marketplace and control the courier market, if you have had experience with that.

Mr. Armitage: I suggest that you look through the yellow pages and check the number of couriers there are now.

Mr. Carrothers: So it has not really happened.

Mr. Armitage: No. There are an enormous number of couriers, embarrassingly so. Sometimes you have to go through a lot before you find a good one, because there are so many in the marketplace.

Mr. Carrothers: Perhaps one could conclude that even though a large US company might come in, its resources might not help it out, that if there is a market to be served, people will find a way to serve it.

Mr. Armitage: That would depend on their company policy. If they are prepared to lose a substantial amount of money over a given period of time, and the money level is substantial enough, I do not think any amount of legislation or whatever is going to stop that.

Mr. Carrothers: But the minute they start raising prices, a new player can enter the business.

Mr. Armitage: That is right.

Mr. Johnston: And the shippers will see that one does, and that could be themselves.

Mr. Armitage: That is exactly right too. Certainly, from Canada Packers' point of view, our private fleet, I believe, has kept our rates down, certainly comparable to a 1984 level, because of the presence of that fleet. I would love to get rid of it, because if I have to get rid of it, it means that I cannot do it as cheaply as a carrier can do it and provide the same level of service, and that is my business.

Mr. Chairman: Mr. Johnston, Mr. Burns and Mr. Armitage, thank you very much for your appearance before the committee.

The final witnesses for this afternoon are from Al's Cartage Ltd., J. E. Transports/Listowel Transport Lines Ltd. and MacKinnon Transport. I wonder if the gentlemen would come forward, introduce themselves and begin the presentation. Welcome to the committee, gentlemen.

Mr. Frohlich: Thank you very much. I am Howard Frohlich from Al's Cartage Ltd.

Mr. Bennett: Ted Bennett, J. E. Transports and Listowel Transport.

Mr. MacKinnon: Bill MacKinnon, MacKinnon Transport in Guelph.

AL'S CARTAGE LTD.

Mr. Frohlich: Our business was purchased by my father on December 1, 1936. This year is our 52nd year in the family trucking business. The original trucking business was purchased for \$150 and has grown to 115 power units, 267 trailers, 160 full-time employees and 25 part-time employees. The original area he served was Kitchener-Waterloo. Today, we serve all of Ontario south and west of Simcoe county and the region of Durham.

We are extremely concerned and disappointed with the government of Ontario on the deregulation of the trucking industry in Ontario. Most of the industrialized states in the United States realize the importance of a strong, locally based trucking industry. They have retained regulations to ensure their large and small industries in the urban and rural areas have consistent transportation service.

Kitchener is serviced by a minimum of 68 carriers. As a result, our local manufacturing industries are assured of competitive service and rates for both their long-haul and short-haul requirements. The service is provided by safe, modern equipment that is handled by safe, skilled drivers. If we follow the lead of the international carriers, this will change.

On July 28, I was making a pickup in Cambridge. While I was waiting my turn to get into the docks, I was approached by an American driver who was about to back into the dock ahead of me. He offered me \$5 if I would back his tractor-trailer into the dock for him. In a discussion, I learned he had had a half-hour crash course on driving before he left Alabama for Ontario. He had never backed up a tractor-trailer before.

What level of rate reduction will the Ontario government require to justify this situation in Ontario? There is a shortage of good, qualified drivers in Ontario today at the current pay levels. What will we have on the roads driving poorly maintained equipment in the future?

The ease of entry into the public commercial vehicle licensing system today and the reduction in enforcement has greatly increased the number of for-hire carriers. This has kept the rate levels near or in some cases below what was being charged by CN Trucking before it was sold. At that time, the taxpayers were paying millions of dollars each year to subsidize the low rate level CN was charging. If the rates go down further, highway safety will go down with them.

In a letter to the Premier of Ontario, dated March 2, 1988, I asked if his concern for Ontario industries extended to the trucking industry. In his reply, dated June 3, 1988, he indicated to me it did not.

We support the position of Ontario Trucking Association on Bill 88. It is unfair and unreasonable to allow Americans further access to the Ontario intraprovincial freight business if the United States does not do the same for the Ontario carriers. If our government is against free trade with the United States, why does it insist on half a free trade deal for the trucking industry? Apparently, nobody knows.

In a telephone conversation with the Royal Canadian Mounted Police in Kitchener, I asked the following four questions regarding US drivers and equipment moving goods between points in Ontario:

1. Is it legal?
2. If not, what is the amount of the fine?
3. Can the vehicle be seized?
4. How is it enforced?

The four answers were:

1. It is legal now if the domestic freight is moved between the delivery point of the international move and the border; i.e., a truck crossing the border at Detroit, going to Toronto, can pick up in Kitchener and deliver to London on the way back to Windsor.

2. Nobody knew at the time because a charge had never been laid.

3. The vehicle could be seized, but to the best of his knowledge, this has never happened.

4. Enforcement is on complaint, but they have never had a complaint.

The Ontario Shippers' Coalition is very anxious to have Bill 88 passed as it is—I have a copy of a letter dated March 24—and this is to be expected. The shippers now operate over 50 per cent of the trucks in Ontario. The large private fleets will be able to select the traffic that fits their system for backhauls and ignore the balance of of the freight.

Ontario today has a trucking industry which I believe could be competitive if it is treated fairly. That includes fuel costs and depreciation. The many small industries and stores in the towns and cities in Ontario depend on a trucking system similar to the system in place today. They will be the real losers if our transportation system is allowed to be controlled by a few large, private and for-hire fleets.

J. E. TRANSPORTS/LISTOWEL TRANSPORT LINES LTD.

Mr. Bennett: Our firm celebrated its 60th birthday this June. We employ 237 full-time and 26 part-time people, as well as 130 owner-operators, in our entire operation, including J. E. Transport's international and intermodal operations.

The average length of service for our full-time personnel is 11 3/4 years at the present time. The last survey we did on that took place about 15 years ago and it was 11 years then, so our workforce has stayed pretty well long-term.

Our firm has been a profit-sharing firm for the last 26 years. In that period we have given out over \$5 million in distributed profits to our full-timers, part-timers and owner-operators. Our drivers, dockmen and mechanics are members of the Canadian Transport Workers' Union.

At the present time, the fleet consists of 369 power units and 906 trailers.

We now have \$760,383 sitting on our books in licence values. This was a cost of doing business that the government should recognize. We should be allowed to write the items off as an expense because of deregulation. I

realize there is a five per cent write-off now, but five per cent is really peanuts and does not mean a dang thing as far as we are concerned.

The way I see it, our domestic runs on the Toronto-Windsor-Niagara Falls runs would be our most vulnerable areas, should the American truckers be given free rein in Ontario. At the present time, we are having difficulty balancing our American moves because, from what we can determine, the southbound freight is being hauled by US unlicensed, independent truckers, with contacts through Canadian load brokers. I might add there could be American load brokers with contacts up here as well. They will haul freight for little more than enough to cover the fuel costs for the backhaul on their homeward-bound journey.

With free access to our markets, it would not be long before our heavier-type shipments—5,000 pounds and up—would be fair game from Metro Toronto to any point in line with the independents' return trip to the US border—not only the independents, but the established fleets as well. The resulting backhaul rate cutting would be catastrophic for Canadian carriers. There is no doubt that the individual American states realize that this principle applies conversely to them. That is a good part of the reason intrastate traffic is closed to us.

With the above scenario, I estimate the 10 per cent to 15 per cent of our domestic move could be lost, affecting the jobs of up to 35 or 40 Canadians in our firm.

We now help balance our international operation and our domestic operation with loads, especially on the Toronto-to-Windsor corridor. In doing so, we keep our Nashville, Tennessee, drivers within US hours-of-work rules by using Windsor as our switch point. A move into deregulation could drastically alter the balance if US carriers take freight from us on that traffic lane.

Conversely, if we were allowed to move freight intrastate, from New York City to Buffalo or Rochester, it would give us the chance to help fill cube on our return from the eastern seaboard, because we have two to three trailers a week coming back from that part of the country, or we could be moving goods from Battle Creek or Grand Rapids in Michigan back into the Detroit area from Chicago, where we average about a trailer a day. Today, intrastate regulation would make this impossible.

If a Canadian trucking firm is caught intrastating, customs have the right to charge 10 times duty on a vehicle, up to the total value of the truck, or US Immigration could seize the truck and jail the driver. I checked with our attorney in Buffalo and that is the information I got on what could happen to us on intrastating.

At the present time, even under regulation, there is an overcapacity of trucks in Canada. This has been reflected in the downward trend in rates over the past year and a half to the point where I believe a lot of Canadian trucking companies have been seriously weakened. Many will go belly up when the Americans come pouring over the border.

The large American carriers could, if they wished—not to say they will—cut rates in Ontario—predatory pricing—until they have the majority of domestic carriers knocked out of the business, and then raise rates to much higher levels that would be detrimental to the Ontario shipping public.

It is only a gut feeling on my behalf, but I do believe the Canadian carrier is in a pretty darn weak position right now strictly because of that

pricing we did to each other and have still been doing to a degree over the past year and a half. We have put ourselves in a position where I do not think it would take much for the Americans just to knock a heck of a pile of us right out of business altogether.

At the present time we average around seven tons of freight a day interlined with connecting American carriers at the border. This freight will be lost when deregulation is in place. In our case that will mean the loss of jobs for at least two Canadians.

There was something put to me by one of the chaps who was at the hearing here about operating from Buffalo into Toronto. Some thought that was nigh on to being an impossibility, but we do have routes out of Cambridge that have about as long a length of haul to our far points; I am thinking of places like Goderich, Douglas Point, Hanover and Walkerton. We have no trouble day after day running peddle runs with 20 to 25 drops on those runs and bringing back freight.

We also have a pedal run out of Buffalo for one specific customer, with sometimes two or three drops into that Toronto market. We have no problem serving that. So there is no reason that the Americans could not, if they wished, serve the Metropolitan Toronto market from their Buffalo headquarters or their Buffalo terminals.

MacKINNON TRANSPORT LTD.

Mr. MacKinnon: I am Bill MacKinnon, president of MacKinnon Transport.

MacKinnon Transport is a family-owned and operated company which was founded by my father on June 4, 1929, in Caledon, Ontario. The business was relocated to Guelph in 1959. We presently have approximately 80 employees, plus 18 owner-operators. MacKinnon Transport is basically a truckload carrier and operates between points in Ontario and between points in Ontario and points in Quebec. Our present equipment consists of 60 power units, 140 trailers and 18 owner-operators.

MacKinnon Transport has an excellent relationship with its employees. We are not unionized. We have a full-time safety representative and a driver trainer. Many of our drivers have in excess of 15 years of accident-free driving. We have a safety bonus plan which pays our drivers an additional five per cent of their yearly earnings. In 1987 we paid in excess of \$75,000 of this bonus for accident-free driving. We have a very good record with workers' compensation as a result of our safety and driver training programs.

MacKinnon Transport has always strived to be a good corporate citizen, actively supporting the trucking industry by my involvement as president of the Ontario Trucking Association for two years and chairman of the board for three years. I have just completed my term of two years as president of the Canadian Trucking Association.

MacKinnon Transport supports financial and fund-raising programs for St. Joseph's Hospital and the Guelph General Hospital. I am also active on the fund-raising committees. I have been a member of the Kiwanis Club of Guelph for 25 years. My son, Evan, is an active member of the Puslinch Optimist Club. Both clubs render much assistance to the betterment of Guelph and surrounding community.

I was a member of the board of directors of Transportation Safety for six years. I have been a member of the Guelph Police Commission for two years.

We also support many other activities in Guelph, ensuring that MacKinnon Transport will remain an excellent corporate citizen to our community and the surrounding area.

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My reason for being here today is to bring to you my concerns towards the future of the trucking industry in Ontario. The passage of Bill 88 in its present form will hurt my business greatly. I say that for the following reasons.

The bill is very detrimental to the Ontario truckers, especially the smaller firms who do not have the financial resources to be involved in price wars for any extended period of time.

All Canadian truckers are under a severe handicap with our American competitors because of the tax structure as it relates to depreciation on trucks and trailers. I know that many Canadian truckers have incorporated in the United States and many others are seriously considering same so that they will be on a level playing field to solve their taxation differential.

I have reason to suspect that employment and immigration laws in Canada are considerably more relaxed than they are in the United States. I am also led to believe that enforcement is not a high-priority item. This could also apply to duty-paid equipment used between points in Canada.

It is all well and good to say that the law states this or that, but many laws are only as good as the will to enforce. How effective will the will to enforce be? Bill 88, in its present form, will create an almost impossible task for any immigration and customs enforcement agency. Will it be enforced by complaint only? What other means do we expect will be used? Could a US driver be granted a landed immigrant card for Canada?

As I said earlier, my company at present does not operate between Canada and the United States. I cannot afford American competition that has a considerably lower cost base than my company that may be allowed to operate between points in Ontario. The cost base I am referring to is legislated and beyond my control, such as federal and provincial fuel taxes, federal and provincial income taxes, sales taxes, workers' compensation and all the other legislated cost-related items towards the benefits and protection of my employees. The differentials are just too great.

It has been said that a reciprocity clause would be unconstitutional. The federal government uses a reciprocity clause for the Canadian airline industry. Why would truck transportation be any different? It has been said that a reciprocity clause could easily be circumvented. This is why a strong and meaningful public interest is so important.

For years the government has told truckers that we had to be licensed as a matter of public policy, and the trucking industry evolved under this economic regime doing what it was told to do. This had the effect of limiting the growth rate and level of investment that truckers were prepared to commit. Eventually the operating licence became a significant element in the financial value of most licensed trucking undertakings.

As a matter of policy, the government has decided to change fundamentally the ground rules on which the industry was built and financed. The Minister of Transportation (Mr. Fulton) is on record as recognizing the need for a strong trucking industry.

The decision to change the ground rules has major financial implications for those who invested under the old rules in good faith. The trucking industry is asking for help in meeting the transition to a new regime dictated by a different public policy perception.

The industry is heavily leveraged, with a debt-equity ratio for major truckers being in the area of 1.7:1. Anything which destroys the intrinsic value of trucking companies is obviously going to affect the ability of those companies to borrow and to finance expansion and new opportunities to extend operations throughout Ontario or into the United States.

A further factor of great concern is for the family-owned trucking company, especially second- and third-generation companies which have been passed on. Family financial settlements have been made with brothers and sisters who are not active in the business, based on valuations including the value of a franchise. Thus many proprietors in the industry have assumed financial obligations based on a value which, pursuant to the new transportation legislation, will be reduced to zero when almost anyone can have a trucking licence for the asking.

While there is supposed to be a three-year transition with a residual economic test applying during that period, few people in the trucking industry see that as any kind of meaningful economic control. Can you imagine the upheaval there would be in the farming community if the Department of Agriculture decided to eliminate the milk quota or the egg and chicken marketing quotas and other marketing boards and quotas which have been the economic stability for the farmers? The value of these quotas is an intrinsic part of the value of the whole farm asset. It is in some cases more valuable than the physical plant, livestock and equipment operated on the farm.

Many proprietors of family trucking companies will have their retirement plans erased if this proposed legislation passes without some form of complementary tax relief. In some cases, the value of a franchise represents most of the tangible value for a lifetime of reinvesting retained earnings in a risky business in the expectation that the operating authority would ultimately have economic value on the sale of the business.

Our industry has been holding discussions through the Canadian Trucking Association and the Ontario Trucking Association with the departments of Finance and Transport concerning the tax treatment of the asset value of licences and goodwill. You will appreciate that the current tax laws do not consider the impact of the proposed legislation, which effectively destroys the asset value of licences and goodwill of virtually every trucking firm in Canada. Therefore, motor carriers face significant losses without tax relief. As we are apparently following the trend of deregulation started in the United States, I respectfully point out that the United States introduced tax relief with deregulation.

The relief for the industry would also mean that truckers could invest the proceeds from tax relief into new, more efficient equipment which would help them compete and survive in the face of competition from US carriers which have already become lean and mean. However, our federal and provincial Finance department people seem to remain unconvinced that tax relief for motor carriers is needed. Let us remind them that the hard-earned assets will be nothing more than pieces of paper should regulation as now defined be passed. Motor carriers' planning, financial and otherwise, will be suddenly and significantly changed. It is essential that carriers be in a position to proceed with financial planning under a deregulated environment.

I note with interest that Transport Canada will provide a \$15-million grant over three years to help Canadian railways develop a train control system. Government has traditionally recognized the need for support of particular industries. There are loan guarantees and forgivable loan programs, legislated protection for bank depositors and even support for industries with special transitional problems, such as tobacco farmers, BC fishermen and grape growers.

In conclusion, the trucking industry is also having severe transitional problems and is requesting your support. Thank you for taking the time to consider my views.

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Mr. Chairman: Thank you, Mr. MacKinnon. Several members have indicated interest in asking you questions.

Mr. Brown: Thank you, gentlemen, for coming today. I will start with Mr. Frohlich, because it is his viewpoints that raised some questions in my mind.

I was appalled by your story of being offered \$5 to back a truck in for a very obviously inexperienced American driver. My understanding is that the Ministry of Transportation has asked customs and immigration for the authority—is that not correct?—to enforce the customs and immigration laws in respect to the trucks. I think there is something happening in that area to help you out at least a little bit.

Mr. Frohlich: Is this the driver training you are talking about? What is customs going to do?

Mr. Brown: No, I am talking about the truck being used in Canada when it is not supposed to be. Obviously it can come in and go out, but it cannot move between points without a Canadian driver. The truck can move, but the driver needs to be Canadian in that instance, if I understand from the minister correctly. The enforcement seem to be the basic problem.

Mr. Frohlich: How would they ever enforce that one? If he comes across the border, if he crosses from Detroit to Toronto and they check him at the border and everything is just fine with what he has, who is going to check him after he picks up in Windsor for Kitchener?

Mr. Brown: I suspect that the ministry, through its normal checking services on the highway, the way it regulates all trucking on the highway for safety and all the other things, would make those checks; the second point being that that is federal legislation that is in place, which this committee, unfortunately or fortunately, depending on how you look at it, has no jurisdiction over.

Mr. Frohlich: That is the Royal Canadian Mounted Police. That is what I was told. That is why I phoned them. They have never had one yet.

Ms. Kelch: Can I offer a point of clarification on that? I do not believe it is the RCMP that has the responsibility; it is customs officials, because it is customs and immigration law.

Mr. Frohlich: I phoned customs and they have the responsibility, but the RCMP does the enforcing. I could be wrong, but that is what I was told.

Mr. Wildman: If you have an American working in Canada illegally, it is the RCMP that carries out the enforcement.

Ms. Kelch: I do not think so.

Mr. Wildman: It has happened in my riding.

Mr. Chairman: Margaret happens to be the assistant deputy minister of the Ministry of Transportation.

Mr. Brown: I happen to have the privilege of being a former customs and excise superintendent's son, and I know for a fact that customs does and has seized trucks. I know they also use the RCMP to investigate. The problem, I think, is in the enforcement part.

Mr. Frohlich: Right, and that is where our concern is.

Mr. Brown: It is very difficult to enforce, as you are pointing out. I would also point out that there are 32 more inspectors; is that the right number?

Ms. Kelch: That is correct, yes, to help enforce the National Safety Code.

Mr. Frohlich: There may be 32 more, but probably 1,000 a day come over the bridge there. They can haul freight both ways legally on the truck; maybe not the driver, but the truck can. I think it is a pretty fine line of enforcement getting it down that fine.

Mr. Brown: I guess your suggestion to us, because we have no control over the actual legislation here, is that we should beef up enforcement. That is the point you are making here.

Mr. Frohlich: That would be a good first step, yes.

Mr. Wildman: Mr. Frohlich, I think you posed a very central question when you said, "If this government is against free trade, why is it bringing in free trade in trucking?"

Mr. Frohlich: Half of free trade.

Mr. Wildman: I do not think I have to spell out the answer as to whether or not this government is really against free trade.

Mr. Pouliot: But the Premier said—

Mr. Wildman: I would like to raise a couple of questions with regard to the US experience since deregulation or reregulation, or reform or deform or whatever you want to call it, of the industry started in the US. We have been told on a number of occasions that initially after the US federal government deregulated, there was an influx of firms into the industry; there was a shakedown period and now, about eight years later, the number of truckers that have control of the majority of the business is much smaller than it was originally. Do you anticipate that kind of thing happening here, whether or not they are American firms?

Mr. Frohlich: Or Canadian. Yes, I do. We have heard of the way they did it in the US. They just go into an area and reduce the rates so the small,

local people cannot compete. When they are gone, the rates go up. One of the top 10 just went broke in the last couple of weeks, but there are some pretty well-financed companies in there and they can handle it; a company like ours would be licked. We just do Ontario. We do not go to the states. I read the same books you do.

Mr. Wildman: I want to talk about intraprovincial trucking in this case here. How would you gentlemen and your firms attempt to compete in such a marketplace? What sorts of ways would you change your business in order to survive in what you have just said you anticipate will happen?

Mr. Frohlich: I just read an article in an American trucking book; the American Trucking Association I think it was. It was a long-time family business, I think into the second or third generation, and he had started a small warehousing business. He folded up his trucking business and went into the warehousing business. He said he is going to be the one who does something before he is broke. He just closed down and went into warehousing.

Mr. Wildman: So he changed his business completely.

Mr. Frohlich: That is right. He said that in good years he made two per cent on trucking and he was going to do about 18 per cent on the warehouse.

Mr. Wildman: What do you do with the argument that there is an overcapacity now in Ontario and maybe some of these guys should go out of business?

Mr. Frohlich: There is an overcapacity and we still have regulation. A lot of them are going to go out of business because a lot more are going to start up. It is just dumb. There are too many now. What are we deregulating for? What is this going to serve? I do not know.

Mr. Wildman: Basically you are saying it is going to increase and there are going to be a lot more firms operating for a time and then going bankrupt.

Mr. Frohlich: That is right. I have the papers here—you all have them—about CN and Transport Route Canada. I think it was in the paper just in the last two days, all the problems they have; they are a big one and have a lot of money and they still have problems.

Mr. Wildman: Do you anticipate there will be more owner-operators being used in Ontario for trucking goods within the province?

Mr. Frohlich: Yes. Every driver we have is a potential competitor later on because they figure: "Al's can do it for \$200, and they have to run a business and have property and all this stuff. I will park the tractor behind the door, so I can probably do it for \$150." The next one will think he can do it for \$140, so we will have a lot of them.

Mr. Wildman: Would you anticipate that firms such as yours might change from wholly owned fleets with employees as drivers to attempting to persuade perhaps some of your drivers to purchase the truck they are operating?

Mr. Frohlich: We are now 100 per cent owned by the company and we would very much like to keep it that way, because what you are doing is passing the buck to the driver who is probably going to mortgage his house to buy the truck and lose them both.

Mr. Wildman: You would be passing part of the loss of margin on to the driver.

Mr. Frohlich: That is right.

Mr. Wiseman: This morning I was talking to Mr. Baker and Mr. Reimer about what the banks might say when you go in after this legislation goes through and you have paid \$500,000 or whatever for the right to get different licences in different areas. You have brought a different dimension to that. You said some have sold out to members of the family and now the person who kept that on will have to pay the members of the family, I suppose, for something that is worthless to them now.

I asked this morning about the banks or whatever lending institutions we go to. All of us in business have to use them once in a while; we do not like to but we have to. We know how the banks and others are wanting about four or five times more collateral than they will give us to borrow. You go in with your statement of last year which showed those licences as an asset and then you go in with \$500,000 off that. I think it was Mr. Baker who said he wrote off about 20 per cent of his fleet every year to keep it up to date. My concern was that, perhaps to make the bank statement look better, people would not buy the new equipment they require once in a while to replace that 20 per cent or whatever per cent, but would keep it on for a longer period of time. Probably in that way, your drivers may be more at risk because you are keeping the rigs around longer.

1700

Mr. Frohlich: Than they should be.

Mr. Wiseman: Do you see that as a big problem? Would the banks, maybe in some cases where people got in in the last while, put them out of business, because when they send their report on to their head office now it would show that they did not have the assets they had last year and it is all because of this fact?

Mr. Frohlich: Yes, I think that will be a real problem in dealing with a bank. Now you can get money only if you can prove you do not need it. Next year, we would not get it even if we can prove we do not need it.

Mr. Wiseman: Some of the ones we were talking to are not much bigger, and if they are having a problem, then for the smaller firms it is going to be worse.

Mr. Frohlich: It is going to be worse because that is our business. We started our first application in about 1950 for our first public commercial vehicle licence. We have applied many times over the years for little additions, and that is the way it was. We have put a lot of time, effort and money into doing it that way. It is a good system.

Mr. Wiseman: Some of you mentioned the taking and giving of something like you did in the states for those PCV licences. Would you be content, like some of them this morning, to get a 100 per cent write-off instead of five per cent per year up to 50 per cent? Would you be content with a 100 per cent write-off over a period of time and go that route? I see that as easier for a government than coming up with a cash settlement. Where do you draw the line as to how much you have in them now? Would you be satisfied with that?

Mr. MacKinnon: There is a problem we have had in several of our meetings, starting in Ottawa and then in southern Ontario; I have not attended the Ontario meetings. If you go to the Department of Transport, it says, "Yes, we caused the problem, but you have to get the money down the street, from Finance." So you go over to the Department of Finance and it says, "Yes, we have the bucks, but we didn't cause the problem." So what do you do?

Mr. Wiseman: I am finding that right here with our government. I said it to the minister the other day when he was here, for the areas he has responsibility for like the sales tax, the fuel tax, the provincial taxes, which you know and I know are more in Ontario than they are in Quebec, and they are a heck of a lot less in some of the states across the border. He has some room to move there. He has not. In some cases, in all fairness to him, he just passed off the depreciation and everything as federal, which they are, but it would be nice to see this government move in a way to lower that or give you that level playing field everybody has been talking about where it has the jurisdiction to do so. They are the ones who are introducing this.

Mr. Bennett: I suggest about 20 per cent a year would be fair. I would buy that, 20 per cent right off instead of five. In my mind, five per cent is a little laughable.

Mr. Wiseman: Have any of you fellows purchased licenses in the last five or 10 years?

Mr. Bennett: Yes, considerable.

Mr. Carrothers: I want to follow along with the concern of what is happening with these licences. This change in the legislation has been discussed, I gather, for about the last decade now. It has been around a bit. I am wondering what you have been doing on your balance sheets with these assets. Have they been written down to some extent in anticipation of a change?

Mr. Bennett: We are only allowed to write down five per cent.

Mr. Carrothers: Only five per cent.

Mr. Bennett: We took the maximum right off.

Mr. Carrothers: So one of the points you will be raising is that perhaps you were not allowed. You have not really been taking into account, on your present balance sheets, the potential diminution in value of these licences, I guess.

Mr. Bennett: Only in my head.

Mr. Carrothers: Only in your head.

Mr. MacKinnon: I think it is a sad thing, because our accountants say the law says that you can do only five, but they will tell you it is not worth it. Now, are we not sucking and blowing at the same time on this thing?

Mr. Carrothers: I do not know whether the law he is talking about is his own accountancy practices or whether—the Canadian Institute of Chartered Accountants has actual guidelines—

Mr. MacKinnon: I had a discussion with him a while ago. I said: "If I have to write off a vehicle, it is completely beyond repair and I write it

off. Here is the licence value. It is beyond repair." Different law. It is very discouraging to me.

Mr. Carrothers: You were saying that if we do change, one of the changes this legislation will bring about is that we will not have to get the operating authorities you have obviously purchased for so much money. I do not know how broad your various authorities are, but I am wondering if you feel that you might get new opportunities for business maybe to replace some of these as a result of these changes. Do you see other fields you could move into or things you might add on to, that before you might have had to pay a great deal to get the operating authority for, but after this is in place, you will not have to pay anything for?

Mr. Bennett: I see a dilution of opportunity for a while when everybody and his brother gets into the act. For those who survive, perhaps it will be a good thing.

Mr. Carrothers: Looking at your own company's future planning, as I am sure you must do, are you not anticipating new areas you could get into here because of these changes, that you might want to be into now but have not perhaps been able to afford to get into because you could not purchase the licence?

Mr. Bennett: We actually decided that we were going to stay primarily in southwestern Ontario and try to handle a domestic market we knew. Since the question has come up about what we are going to do, if it gets to the point where I can make more money by putting my money in the bank and selling my assets, and it is getting close to that point now, it is not going to be hard to make the choice.

Mr. Wildman: There will be a lot of guys out of work.

Mr. Bennett: Listen, we have some people there who have been there for 35 or 40 years, but I am not going to sit back and take the money that has built up and blow it. It does not make any damn sense.

Mr. Carrothers: I guess what you are saying is that you do not really feel you are getting new opportunities here.

Mr. Bennett: No, I do not think so. There is going to be more pressure from all sides and that does not present opportunities, the way I see it. It presents a real challenge for a while, and there is going to be a lot of cut-throat manoeuvring there for some time until it shakes out, as it has Stateside. History repeats itself and it is going to repeat up here what it did down there. Then the big guys are going to come out winners.

Mr. Carrothers: I guess I have just thought of one of the constraints that is presently there. You have to buy these licences. You have discussed the financial treatment, which may not be the best. I guess I thought that you might have other opportunities because you now do not have to do it, that you could get into some other field or expand your activity. You will not have to make that big upfront investment. I guess you do not see it the same way.

Mr. Bennett: Where there now might be four or five people in that market you would like to go after, under deregulation, when they open it up, there could be 20 to 25 seeking the same market and that is going to make it tougher, so I do not see the opportunities initially. For those who can hang on, the opportunities may be there in the long run.

Mr. Carrothers: An experienced trucker surely must have some advantage over a new guy in the market, though.

Mr. Bennett: In some respects, although we have overheads and we have lengths of services that cost money: your holidays, your fringe benefits. The new guy coming in is going to come in at \$8. We have seen it happen. They are tough for a long, long time, because they come in at \$8, minimum fringes and no long-term salary commitments. Five-, six-, seven-week holiday periods in a year—we get into a lot of that with our long-termers—boy, I tell you, that is a really big hurdle to overcome when you have been in it for a while.

Mr. Carrothers: Thank you.

Mr. Bennett: Could I make one more point on the brief of the people who were in here just before, the Ontario Shippers' Coalition. There is one thing that comes to mind under their point on page 11, I think it was, the reciprocity and the guidelines of the government. I think that somewhere along the line the shipping coalition and the transport industry are a little bit on line there. Maybe with some heads getting together from their side instead of our being at loggerheads, as we appear to be, there may be a light in the tunnel somewhere, where maybe we could come to some agreement and give some guidance to the government that will settle this whole thing fairly easily. I do not know.

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Mr. Smith: I believe one of the comments that was made by Mr. Jobe and Mr. Armstrong—I hope I am correct on this. I do not know which one said it. They were representing the Grocery Products Manufacturers of Canada and they said, the way I heard it anyway, that the reason they wanted to see this bill passed was that they did not feel they had good trucking service in some cases.

As you represent smaller firms, do you get large complaints or a lot of complaints from these people whom maybe you are delivering to? When I look at the page of companies those people represent, those are big firms. They are so broad-based and diversified, they could hold you at bay for years if they wanted to. Do you have a lot of problems right now in satisfying their service requirements? I am sure they said it. I just ask for your comments on it.

Mr. Bennett: The grocery receivers, not the grocery manufacturers, are the biggest problem in Ontario. They have been for years. They will hold your trucks up and they will not pay detention. They are the worst culprits we have in the industry. I think we can all three agree on that.

Mr. Frohlich: They think nothing of your sitting at their door for three, four or five hours before you even get into them.

Mr. Smith: What do you mean when you talk about grocery receivers?

Mr. Bennett: I am talking about the distributors.

Mr. Frohlich: Loblaw's, A and P and all those.

Mr. Bennett: Steinberg.

Mr. Smith: These ones are right in here.

Mr. Frohlich: Yes, they are the worst of the bunch.

Mr. McGuigan: No, those are the manufacturers.

Mr. Bennett: The manufacturers are not the problem. It is the manufacturers' customers that are the problem.

Mr. McGuigan: Those are not the retailers. Those are the manufacturers.

Mr. Smith: But they are all very close-knit. Some of these companies here own some of those companies you are dealing with.

That is why I say there is such a web in there. I do not like to attack the big companies all the time, but I can see that if you do not stand up for the little guy every now and again, there will not be any. I am a farmer basically, every now and again, but I hear this all the time and have for years in the farming industry. Our numbers are just coming down. If you saw them on a chart, it is pretty nearly straight down.

You are going through the same problems as the farming community. It is the smallest that get pushed out. They can say it is great for the country, but if you look at the deficits of every country, I do not think it is good. That is getting into a broad, global picture, but they talk globally, worldwide. Those are the words they use.

I just say myself, from an individual point of view, we are just not on the right track if we kick all of these guys out, I do not believe. That is a personal observation. I just wanted to hear your comments on some of the remarks that were made by this group.

Mr. Bennett: I tried farming for about 10 years and I would go broke fast if I depended on it.

Mr. Smith: I have lasted longer than you.

Mr. Wildman: You would go faster because you are in trucking.

Mr. Bennett: I sure would.

Mr. Chairman: Mr. Smith believes in the theory that if you want to be a small businessman in this country, you start big.

Thank you very much. We appreciate your agreement to triple up your presentation to accommodate the schedule of the committee. That helped us.

Mr. Frohlich: Perhaps I could just say one more thing. I was down in the US not too long ago. We have been deregulated for maybe seven or eight years or whatever. You still see all kinds of private trucks on the road. All these grocery stores are still running their own. You see Coca Cola, Sears and a whole batch of them. They are not really out there for the dollar savings in all cases.

Mr. Wildman: Whereas they told us that if there were deregulation, they would get out of the trucking business and they would hire for-hire trucks.

Mr. Frohlich: They will be into it in a bigger way. They will be for-hire carriers.

Mr. Bennett: There are some studies on the big fellows. When you show them what it is costing them, that they can save money by shipping common carrier, then they will justify their existence by saying it is the advertising value. So how can you win?

Mr. Chairman: This committee will be adjourned until 10 a.m.

The committee adjourned at 5:15 p.m.

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STANDING COMMITTEE ON RESOURCES DEVELOPMENT

ONTARIO HIGHWAY TRANSPORT BOARD AMENDMENT ACT
TRUCK TRANSPORTATION ACT

THURSDAY, SEPTEMBER 1, 1988

Morning Sitting



STANDING COMMITTEE ON RESOURCES DEVELOPMENT

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Substitutions:

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Smith, David W. (Lambton L) for Mr. Miller

Clerk: Mellor, Lynn

Staff:

Richmond, Jerry M., Research Officer, Legislative Research Service

Witnesses:

From the Ministry of Transportation:

Fulton, Hon. Ed, Minister of Transportation (Scarborough East L)

Kelch, Margaret, Acting Deputy Minister and Assistant Deputy Minister, Safety and Regulation

McCombe, C. J., Director, Office of Legal Services

From the Canadian Industrial Transportation League:

Long, J. David, President

Hughes, Donald B., Vice-Chairman; Director, Transportation and Distribution, Stedmans

More, Philip J., National Highway Chairman; Manager, Supply and Transportation Services, Canada Colors and Chemicals Ltd.

Dion, Joseph P., Director of Policy Development

Individual Presentation:

Goodwin, Terry

LEGISLATIVE ASSEMBLY OF ONTARIO
STANDING COMMITTEE ON RESOURCES DEVELOPMENT

September 1, 1988

The committee met at 10:13 a.m. in room 228.

ONTARIO HIGHWAY TRANSPORT BOARD AMENDMENT ACT
TRUCK TRANSPORTATION ACT
(continued)

Consideration of Bill 87, An Act to amend the Ontario Highway Transport Board Act, and Bill 88, An Act to regulate Truck Transportation.

Mr. Chairman: The standing committee on resources development will come to order. I would remind members once more, gently, to get their airline tickets in to the clerk, if they have not done so already.

Our first presentation this morning is from the Canadian Industrial Transportation League. I think Mr. Long is the spokesperson. I am sure of that and I am sure he will introduce his colleagues. Mr. Long, welcome to the committee. We are pleased that you are here.

CANADIAN INDUSTRIAL TRANSPORTATION LEAGUE

Mr. Long: I would like to introduce the panellists who are here with me today. I think we have a very balanced panel representing shipper views. To my left, we have Don Hughes. Don is the vice-chairman of CITL and director of transportation and distribution for Stedmans. On my right is Phil Mora, the manager of supply and transportation services for Canada Colors and Chemicals. On my extreme left is Joseph Dion, director of policy development for CITL. Last, but not least, although he is not at the table, we have Mr. Sloan back here. Mr. Sloan is a very valuable member of our team. He is the league counsel and, I might add, a former vice-chairman of the Ontario Highway Transport Board.

We wish to thank the chairman and members of the committee for the opportunity to present the views of our Ontario members on Bills 87 and 88. As key players in this discussion—namely, the customers of the trucking services the safe conduct of which the government is charged with overseeing—and as industry people who have given freely of our time since 1976 to arrive at the compromise proposals embodied in the present bills, we feel the views of our membership will aid the committee in its deliberations.

Our position is quite simple. I guess you heard it yesterday from the Ontario Shippers' Coalition. Bills 87 and 88 must be passed and implemented, as written, as soon as possible. Any further tinkering will destroy the integrity of this legislative package. Any further delay will come at a direct cost to the prosperity and, in some cases, the economic viability of the goods-producing companies in all regions of Ontario, their owners and their workers.

We are a national association of shippers, the purchasers of transport services. Our membership is made up of approximately 450 firms, represented by 900 individuals, including virtually all industrial and retail sectors located

in most regions of Ontario. We purchase transport services in all modes of transport and combinations of modes, i.e., intermodal transport. We ship goods for sale domestically, transborder to the United States and for export overseas.

We were founded in Toronto in 1916 and we continue to enjoy a substantial membership base in this province. Our membership is the voice of the producers who must compete in Ontario to survive, maintain the jobs they have already created and create new ones. They need competitive transport services to do so.

I do not want to get into a statistical presentation, but the other day we looked at 82 of our companies that are represented within the Financial Post 500. Very quickly, those companies total \$148 billion of sales. To be very exact and precise with statistics before this committee, \$148,470,166,000 was the total. They employ 732,000 people. I believe our total revenue with our members is probably in the neighbourhood of well over \$160 billion. I might add that the two gentlemen who are here today representing the league and representing their companies are not among the list of those big companies represented in the 82 I mentioned.

In addition, we are pleased to be a member of the Ontario Shippers' Coalition. This umbrella group, which you heard from yesterday, comprising ourselves and several sectoral trade associations, represents a truly staggering number of firms and jobs in Ontario. We are all for one thing: a modern, competitive and safe transport service industry where a trucker is free to offer the service his customer requires at a mutually agreed upon price.

I have noticed during the proceedings that questions have been asked of shippers, quite rightly, in terms of what does this mean to the consumer? What kinds of decreases are there likely to be in terms of prices on the shelves? The answers have been somewhat evasive and reflective because the questions are very complicated. It is very hard for any company, in all honesty, or any representative to say a bottle of Heinz ketchup is going to go down 10 cents or 15 cents in any store. It is not correct for anybody even to make that assumption before this committee. You are asking him to predict something in an environment that has not really occurred yet. I think the best way to respond, if the committee will indulge me, is to read from a report that was presented recently.

This is not a consultant study done for shippers in the United States or for truckers or labour unions. It is a report done by the Federal Trade Commission in the United States. It is entitled Deregulation in the Trucking Industry. It was released just last May. If I can indulge the committee, I would like to read about what has happened in the United States.

I would like to say, again, I think it is important that the committee gets accurate statistics. I am on the board of the Canadian Transportation Research Forum and I take it very seriously when any statistics are given to a committee of this stature. The report states:

"The Motor Carrier Act of 1980"—this is in the US—"significantly reduced control by the Interstate Commerce Commission over entry, pricing and operations in interstate trucking, ending 45 years of tight, federal regulation.

"The deregulation of interstate trucking has led to lower prices, more efficient, reliable and innovative service"—and we heard that word 'innovative' yesterday—"and a significant overall reduction in the nation's logistics costs. Several states have followed the federal government's lead by deregulating intrastate transport.

"Drawing on the work of our authors, we estimate the total benefits of trucking deregulation to be between \$39 billion and \$63 billion per year, or between \$160 and \$260 for every American."

I want to qualify that. There is a little asterisk beside that. It says: "Our estimates are based on studies of the aggregate benefits of trucking and railroad deregulation. These estimates include inventory costs savings for shippers and manufacturers as well as benefits from lower transportation prices."

There is nothing in there that says consumer prices have gone down. It is talking about the fact that there is definitely a saving that occurs within the goods or wealth-producing sector of the economy.

"Deregulation opponents predicted that it would bring reduced service to small communities, destructive competition, confusion among shippers and unsafe trucks. These predictions, however, have not been confirmed. For instance, surveys of shippers show that small communities, as a group, have benefited from deregulation.

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"Destructive competition also does not appear to have taken place. Although many firms have gone out of business since deregulation, the total number of trucking firms has increased. In one class of trucking, LTL carriers, there are fewer firms nationwide since deregulation. However, the number of competing carriers for less-than-truckload shipments has increased by almost three fourths on 250 major routes. Given the increased number of firms and the lower prices, deregulation has, if anything, enhanced competition on most routes and in most types of service."

I would like to read another paragraph here and then get on with the submission:

"In addition to these effects, deregulation has affected those who work in the trucking industry. Researchers find that trucking firms with inefficiently high costs, which were previously protected by regulation, have lost revenues and profits. Employment in the trucking industry has increased since federal deregulation and employment growth in California's trucking industry during its period of deregulation compared favourably with other industries in California. Studies show that deregulation has also reduced the premium paid to union employees, although these employees still earn significantly more than their nonunion counterparts."

That, again, is a statement from the Federal Trade Commission, a very respected commission, particularly its bureau of economics. Like the rest of you, I go through these reports from interest groups that are self-serving. I believe that to be a fair and objective appraisal of what is actually happening within the United States. Again, it is not predictive; it is based on what has happened.

Our members are called shippers, but who are they really? As was said yesterday, they are every mine, every mill, every factory and every store in the ridings represented by the committee members and all their colleagues in the Legislature. All these shippers, whether a mine employing thousands or a hardware store employing a handful, have one thing in common: they have to get their product to the customer or receive product from suppliers under the best transportation arrangement.

At present in Ontario, that product is often carried on the highway by a for-hire carrier often protected by law from competition and allowed a guaranteed rate of return, no matter how poorly managed the company may be. I want to explain specifically this point of guaranteed rate of return.

Carriers get together in tariff bureaus and decide collectively among themselves what the general freight rate increase will be. That is based on setting a prescribed guaranteed rate of return for their industry. What happens is the increase comes along to match what they prescribe to be the guaranteed rate of return for their business. That type of luxury, of course, is not allowed to 95 per cent of the members of the organization we represent. Shippers want this strange, outdated regime to end, and that is why we are in favour of Bills 87 and 88.

Bill 86, Bill 87 and Bill 88 are a legislative package designed to update 1930s legislation which still governs trucking in Ontario. The Public Commercial Vehicles Act, as it was amended in 1933, was one of the many defensive legislative products of the Depression designed to use government intervention to replace normal commercial forces in the face of the apparent collapse of our economic system. However, times have clearly changed and the proposed legislation reflects that change.

Bill 86 has now gone through the legislative process and its implementation is awaiting Bills 87 and 88. These bills have not been thrown together hastily. We suggest that the issues they cover have had more study, discussion and consultation than any of the other, arguably much more important and contentious social issues facing the Legislature of Ontario.

Select committee hearings began in 1976. A report, Responsible Trucking, came out in 1983. A first draft of a new bill was presented to the Legislature in 1984. The first drafts of the present bills were tabled in the Legislature in 1986 as Bill 150, Bill 151 and Bill 152.

This is relatively straightforward legislation. Its purpose is to update a piece of Depression-era legislation. Its goal, so simply put, is to bring open entry to the business of trucking. This means simply that if a businessperson fulfils all the health and safety and other licensing requirements, he is free to start a company and try to make a go of it.

Under the existing PCV Act, you have to argue before a quasi-judicial board, almost always with a lawyer, that it suits public convenience and necessity that you be allowed to enter the market. Most people in the business world find this concept a bit difficult to comprehend when it is explained to them. You have to prove there is a need for your yet-to-be-offered services before you can be allowed to offer them.

Shippers have always found it an expensive charade. The only ones who like it—and these are clear minority interests—are the lawyers who make the arguments, the regulators who hear the arguments and the licensed truckers who

move to bar entry of new suppliers of the service and who pay the lawyers to file objections and argue against a new applicant. The present bills will end that expensive charade. They will also end a guaranteed rate of return which leads to price-fixing and other anticompetitive behaviour.

The present bill deals with trucking within Ontario. As noted above, our members ship substantial volumes of goods within Ontario, but they also ship to other provinces, to the United States and overseas. In addition, they also use rail, air freight and marine, whatever suits their needs. The federally regulated modes of transport saw an end of economic regulation in January of this year. Thus, rail, air freight, marine and extraprovincial trucking are operating in an environment of greater competition.

When you consider that Toronto to Cornwall is an intraprovincial movement licensed under our 1933 PCV Act and that Toronto to Montreal is an extraprovincial movement licensed under the Motor Vehicle Transport Act, where the criteria for entry are fitness and a reverse onus public interest test, I think the members will understand there is a pressing need to bring Ontario's legislation in line with the federal legislation, as the other provinces, notably Quebec, are doing and have done.

Not everybody has had the dubious pleasure of having been through the discussion of the last 12 years and the legislative debates of the last four years. We will not rehash the arguments of the past many years as to whether there should be competition in the trucking industry, as in other businesses, or whether trucking is somehow special and must be nurtured.

The many issues of service to small communities, destructive competition and safety have been examined exhaustively. It was on July 15, 1987, that the Ontario Trucking Association appeared before the Senate. At that time, the only issue was safety. That was two years after the free trade talks had begun. This is the OTA representation before the Canadian Senate on trucking. It says the issue is safety.

We would merely recommend that the committee call on the ministry staff for a balanced view of these many issues, each of which have been held up at various times as the single most important reason to delay change. Shippers have heard such a long litany of single most important arguments that we are occasionally inclined to think they are being used as red herrings to misdirect the debate and thereby stall change a bit longer.

I think I will also quote, if I may, the minister's speech. I find this absolutely accurate in terms of the whole atmosphere surrounding the debate for the past number of years. He quoted Ken MacLaren in Motor Truck Magazine proudly stating that stalling federal government efforts to deregulate trucking for 12 years is not bad for a rearguard action. I think that is really the whole attitude that surrounded this debate for the past decade.

As we have said before, the Ontario trucking industry has said there was only one issue, safety, but by November there was a new crucial issue being heard for the first time, free trade, the same free trade that has been discussed since 1985. Safety, in our opinion, remains the only valid issue and one for which Bill 88 allows complete control. Other alleged issues, including reciprocity, that may be dragged up can be more than adequately dealt with by the broad regulation-making powers provided for in the bill.

When the free trade agreement explicitly excluded transportation, this issue arose, phoenix-like, as reciprocity, a phrase emotive in Canadian history. Any specific concerns regarding reciprocity can be and are most appropriately dealt with by the provincial interest clause and the regulation-making powers of the Lieutenant Governor in Council.

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The provincial interest clause, clause 10(3)(b), states that the registrar shall, "where the issue of provincial interest has been raised under subsection 9(5), issue an operating licence with provisions that vary from those applied for."

The intent and force of this clause is clearly to empower the government, through intervention by the minister, to restrict licensing of any applicant, including those from other jurisdictions, should it be deemed to be contrary to the interests of Ontario. This is an appropriate manner for the province to deal with any transborder issues which impinge upon intraprovincial legislation.

As far as regulation-making powers are concerned, those powers ensure that the government of Ontario can well protect Ontario's interest with the present wording of the bill. These are explicit powers to direct the board and issue regulations: Section 37 empowers the Lieutenant Governor in Council to issue policy statements to the Ontario Highway Transport Board; section 38 empowers the Lieutenant Governor in Council to make regulations, notably in subsection 3, that is, "prescribing conditions and limitations to which licences, authorities, permits and certificates of intercorporate exemptions shall be subject;" and then there is subsection 28, "respecting any matter or thing that is required or permitted to be prescribed under this act."

This restrained use of authority and inclusion of transitory concerns in the regulations as opposed to statute, will ensure that the legislation is flexible and effective and that the public interest test will be just that, not a surrogate barrier to entry.

Further, it is significant that no other Canadian jurisdiction appears to feel the need for or is contemplating the enactment of such a reciprocity clause. I would like to quote to you some statements from people in Alberta. This is Bob Drinnan, general manager of the Alberta Trucking Association:

"Five years ago, there were 30 US carriers licensed extraprovincially in Alberta for every one Alberta carrier licensed in the US. Now it is equal." He adds, "Alberta carriers who have expanded south and bought out US carriers have, by and large, done better than US carriers who have bought out Alberta operations."

Gordon Bellingham, chairman of the Alberta Motor Transport Board, in a direct quote: "Alberta truckers can compete with the US; they have been for many years."

I would like to address a point that came to my attention, amazingly, two days ago. It was brought to my attention by our director of policy, Joe Dion. I think this is a really significant point based on, I guess, our recommendation here about the regulation-making powers or policy directives that the minister has.

I present to the committee a brief the OTA made on June 8, 1987, before

this committee in discussing bills 150, 151 and 152. I am quoting the OTA president, Ray Cope, from the transcript. They dealt with about four or five different issues at that time and now there are only two, according to them. The final recommendation of four or five they made had to do with reciprocity. Let me read to you what was said there.

"Our final recommendation deals with the question of reciprocal operating rights. We feel that this committee should go on record as recommending to the Minister of Transport the following policy procedure: The Lieutenant Governor in Council should issue a policy statement on the reciprocity requirements. Then in accordance with section 36 of Bill 150, the Ontario Highway Transport Board would be bound to take it into account as one of the elements of a public interest in paragraph 10(1)(5) of Bill 150."

I present to you that is almost the same recommendation we are making to you right now. We have not accepted the issue as being a real issue. However, we are discussing process here and that process is exactly what we are recommending to this committee. What has changed in one year? I suggest absolutely nothing that would cause them now to start attacking the legislation and to say it has to be in the legislation. They did not say it had to be in the legislation a year ago.

We believe that the legislation addresses the concerns raised by the Ontario Trucking Association in its submission and in its submission last year.

In the course of these many years, shippers have made significant compromises to arrive at a consensus solution. Our position has been that fitness should be the sole criterion for entry. We agreed to live with the three year reverse-onus test first proposed and then went along reluctantly—very reluctantly—when it was extended to five years. Our members do not have five years to adjust to market conditions, nor three.

As is well known, the price of most commodities can change almost daily due to world competitive forces. Shippers have, through the consultative committee process, made significant concessions to arrive at a consensus with the other parties. The present bills are the compromise solution.

Shippers do not feel that (a) the consideration of another rehashed issue, (b) the tying of trucking bills to another international trade issue, or (c) the last-minute attempt to redraft a well-thought-out bill will do anything other than delay and confuse and create a future problem for the Legislature.

The position of shippers is clear and united. We are for prompt passage of the bill as written. Private truckers who operate over 50 per cent of the trucks on the highway are for it. Many for-hire highway carriers who want to offer more services, especially in the north, are for it.

Those against it are a limited number of for-hire carriers who benefit from the status quo and wish to perpetuate it. A few companies still manage to wrap themselves in the Ontario flag or Canadian flag, depending on whether or not they want an operating authority in Alberta or Quebec.

We know that the committee has heard from several trucking firms which have raised the spectre of the American invasion, the end of the family trucking firms—linked by emotion and little else to the family farm—and other chimeras.

Occasionally witnesses try to convince the committee by anecdotal references to trucking accidents they have witnessed. Shippers will never forget the Canadian Trucking Association presenting to the Canadian Senate the CBS spectacular on killer trucks, totally irrelevant to the Canadian situation. The real statistics on accidents are carefully collected in the submission by Margaret Kelch which was given to the committee.

Shippers urge the committee to consider the real facts and the real figures dispassionately presented. First, accidents are down in the United States relative to kilometres travelled. They are up absolutely, of course, as they have been every year since the invention of the automobile. Second, Canada has a National Safety Code in place. Third, employment in the producer sector is the mainstay of the Ontario economy. The impact on it must be of primary concern.

The bills as written have the flexibility to restrict licensing in the public interest and in the provincial interest. All issues have been given a thorough airing over 12 years and now is the time to act.

Shippers recognize that there will be, as there have been, attempts to tie these Ontario highway transport bills to other issues to delay implementation for another six months, maybe another year or maybe two years. We must examine and assess the cost of further delay. The cost is: continued high cost to shippers—Ontario industry put at competitive disadvantage; cost to the Ontario economy—continued overcapacity and underutilization. I would like to address that.

There was a study done by the staff of the ministry on the Highway 400 corridor. I will read the conclusion of that particular paper. The paper is entitled the Cost and Potential Savings of Empty Truck Movements Occurring between Northern and Southern Ontario.

"This paper demonstrates that with better matching of loads between northern and southern Ontario significant savings in transportation costs and trucking kilometres are achievable. There is an opportunity to reduce transportation costs by as much as 17.5 per cent for movements between southern Ontario and central Ontario and by as much as 7.5 per cent for movements between southern Ontario and northern Ontario."

The fundamental conclusion on empty backhauls of the trucks surveyed on the 400 corridor revealed that 36 per cent of the southbound trucks and 24 per cent of the northbound trucks were empty. The statement was made yesterday by the coalition that this is a clear example of overcapacity in a regulated market.

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Further costs: continued confusion over the role and authority of the Ontario Highway Transport Board; continuing different regimes for extraprovincial and intraprovincial trucking on overlapping routes; continued loss of for-hire traffic to private fleets; unfair advantage for Ontario truckers getting entry to more regimes in other provinces.

Currently, trucking in Canada is in a mess. This is not just a shipper-guided perception but one that most trucking associations accept. The same federal statute is administered differently by every provincial highway board. No one seems to know what is legal or what is not legal. The linchpin for the whole system is Ontario. The province and the country need this

legislation in place very soon. The delay has been occasioned by narrow, vested interests, but it is having widespread ramifications.

As a national association we are concerned by the increasingly grave effects caused by delay. Our Quebec and our Ontario members worry at the attitudes recently expressed by the Trucking Association of Quebec. "With Ontario in the forefront, the provinces agreed to deregulate the trucking industry and convinced us to go along with it," a senior association spokesman told Motor Truck magazine, "so our government deregulated our transport industry"—that is, in Quebec—"but the others, with the exception of Alberta and Saskatchewan, have not done so. This leaves us with the impression that we have been stabbed in the back, especially by Ontario."

The present bills are well-drafted pieces of legislation, not perfect, but balanced, reasonable and flexible. Texas, the most highly regulated US state in terms of trucking, realized very late that warehouses were moving out of the state because of the absurdly high intrastate rates. Shippers there ship their goods within the state by making a detour across the state boundary to get a lower interstate freight rate.

It is obvious that such commercial decisions made as a result of inflexible regulations carry with them a high cost. Ontario has paid that price for many years. If Ontarians deliberate longer on whether we have the perfect replacement for our 1928 act, we will continue to pay that price in lost growth and lost opportunities. The wealth-producing sectors are unanimous. Associations want the bills passed without change. Ontario shippers urge this committee to report back to the Legislature that Bill 87 and Bill 88 as written be given third reading and royal assent and implemented as soon as possible.

We thank you very much for listening to us and we are certainly prepared to answer any questions you may have of us.

Mr. Chairman: Thank you, Mr. Long. Just so you know what the intentions of the committee are, it is to have one more week of public hearings in September and then, when the Legislature comes back, to close the door and hammer out any proposed amendments and go through the two bills clause by clause, after which point it will be reported back to the Legislature in the fall.

Interjection.

Mr. Chairman: No, the second week we come back. It would be the week of October 24. I do not think we want to get our guests into this, but the committee decided last week it would deal with these bills not the first week the House comes back but the second week. You recall that discussion we had? Then it would be reported back to the House. We think it would take about a week to do that in committee.

Several members have indicated an interest.

Mr. Wildman: Mr. Long, I congratulate you on a comprehensive and thoughtful brief. I noted your comments with regard to the US experience with deregulation at the federal level in the United States, although only seven states are deregulated. You pointed out lower prices, the study of the Interstate Commerce Commission, I think it was, and you qualified that by saying that obviously you do not have information as to what effect that has had on consumer pricing. You also mentioned the number of firms in the

business. I think you were here yesterday when we heard from Mr. Baker and Mr. Reimer.

Mr. Long: I am sorry, I was not.

Mr. Wildman: Okay. I am sure you know of those two individuals. At that time, they indicated to us, particularly Mr. Baker, that the number of firms in LTL in the United States has changed substantially in the eight years since federal deregulation. You noted that there were fewer nationwide firms. Mr. Baker gave numbers in the range of a change from 150 down to eight.

Mr. Long: I cannot substantiate that, but I did hear the debate yesterday and I appreciate the committee's trying to get to the bottom of this issue, which, in a word, is concentration. I can say again, as a member on the board of the Canadian Transportation Research Forum, at its last session there was one paper presented on the issue of concentration within Canada. I am almost afraid to tell you where that meeting was. It was at Minaki Lodge. It was very enjoyable.

Mr. Wiseman: Really opening up the north.

Hon. Mr. Fulton: Spending money up north is okay.

Mr. Wildman: I think that leads to my next question.

Mr. Long: I am sorry, if I may, I want to answer that one. The paper that was presented—and this is a body of practitioners, academicians, a very serious body that reviews research that has been done in the Canadian community for the past year—was entitled, Assessing the Effects of Competition Upon Concentration in the Canadian Trucking Industry. The study was done in 1987 and it used 1985 statistics taken directly from Statistics Canada.

Let me say, first of all, that people do not really tell you what a problem is, they just kick out numbers like 80 per cent, 85 per cent and they do not tell you how many firms that is. Let me tell you what the theoretical construct is here for concentration problems. I am citing the source entitled Canadian Industrial Organization and Policy, by Christopher Green.

You usually talk about four firms; the degree to which four firms have a stranglehold on a particular market. If the four firms are taking between 75 and 100 per cent of a market, the description of the level of concentration is very high, or to use the academic phrase, tight oligopoly. If you move down to 50 to 75 per cent of four firms, we are talking about high and a tight oligopoly; 25 to 50 is moderate, or a loose oligopoly; and if it is below 25 per cent for the four firms, the word they use, rather interestingly, is "atomistic."

Okay, let's present the findings. These are the 10, not the four but the 10, largest firms in Canada and this is a straight lift off Statistics Canada reporting up to 1985. The heading is "Concentration in the Canadian For-Hire Trucking Industry" and the surrogate they use is gross operating expenses, which is tested as a reasonable way to look at the degree to which the companies have a stranglehold on a market.

The top 10, in 1985, 16.4 per cent; the 25 largest, 26 per cent; the 50 largest, 34 per cent. Those are aggregate numbers, admittedly; they will not represent what may be happening between Sault Ste. Marie and Toronto. Somebody

can come in here on a particular corridor and ask, "What about this problem?" That is what this legislation is all about. It is trying to open up the numbers so that we do not have a concentration problem.

Mr. Hughes: Mr. Long, while it is true that in the United States there has been a fairly substantial decrease of LTL carriers, there has also been a tremendous increase or escalation in freight consolidators. A freight consolidator consolidates freight into truckload movements and then turns it over to the truckload carrier, but he performs for an LTL shipper the exact same service that an LTL carrier would, so there has been a balancing by these consolidators for the loss of major LTL carriers.

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Mr. Long: Can I just add to Mr. Hughes's point, and this is absolutely valid. It is something that was not included yesterday when I was sitting at the back. There is something that happens in deregulation—loose takeovers come forward. The experience in the United States was that 1,000 brokers came forward out of deregulation. These are people who position themselves in an entrepreneurial way to put these LTL shipments together into full loads. That was not discussed yesterday.

Mr. Wildman: It was owner-operators mainly.

Mr. Long: Yes, mainly, and consolidators.

Mr. Wildman: I do not want to take up much time because we have other people who want to ask questions. I appreciate your giving a full answer, but your answer basically dealt with the current situation the study indicated in Canada. Now, we have some problems with the figures and I hope the ministry can come up with these figures before we are finished here.

Yesterday, there was some dispute about the figures in the United States. It was suggested that before deregulation at the federal level in the United States, about 150 firms controlled somewhere in the neighbourhood of 20 per cent to 25 per cent of the LTL market. The ministry provided figures that by 1982, they had 40 per cent. Eight firms, according to Mr. Baker, today have 69 per cent of the LTL market. The ministry disputed or questioned that figure. I would appreciate it if the ministry could provide us with what it considers to be an adequate figure.

Mr. Hughes: I think, Mr. Wildman, your percentage of that consolidators' traffic would be part of your truckload movements in the United States. But in fact, they are LTL movements today, consolidating into full load movements that will show in the full load movement what really is LTL traffic. I do not think you really will get a true picture.

Mr. Wildman: I have two other short questions. I understand your position. You have made it very clear. You want open entry into the market. As to this regulatory system that was established in the 1930s, at one point you indicated that you think it is outmoded and on a couple of occasions you said that you think it strange. But surely, in the Canadian experience, regulation of industry is not strange. As a matter of fact, it has been the norm. All you have to look at is the Canadian Radio-television and Telecommunications Commission with public broadcasting. We regulate the airwaves. If you want to get a licence to operate a radio station or a television station, you have to

apply and show that you are going to provide a service and so on. This is hardly strange, is it?

Mr. More: These are occurring in certain segments. We are talking of a business. Where we are handling our goods, we want the right to have a carrier we choose that hopefully is fully licensed and legal.

Mr. Wildman: If you were an advertiser, sir, you might say the same thing about public broadcasting and the public airwaves.

Mr. More: But my industry is not regulated to that degree, and yet I cannot get my goods to market without going through this regulation. That is where my industry is blocked—by not having that ability. My industry is not blocked, so why should my ability to be able to deliver the goods to market be blocked?

Mr. Long: Mr. Wildman, just replying with Mr. More, I think there is a time and a place for everything. I think the industries you have named certainly deserve some regulatory scrutiny. We are talking about a monopoly, the CBC. We have talked about the railroads, a monopoly in this country. I think you turn the taps of regulation on when you are at a time when an industry is in a monopolistic or oligopolistic position, or when it is fledgling and infant. This industry is far from being infant at this time.

Mr. Wildman: The other question I have relates to your suggestions regarding reciprocity. I understand your position, that you have not accepted this is a real problem. You argued at one point that it was irrelevant, but you have also argued that it can be dealt with as the legislation is currently drafted, through regulation. Basically, what you are saying is that in dealing with the reciprocity issue, it should be left to the discretion of the minister to do it through regulation.

I will say the same to you as I said to the Ontario Shippers' Coalition yesterday, that I think that is a most unfortunate way of dealing with anything, despite the fact I have a great deal of respect for the minister. He is an honourable and very flexible man, and very competent.

Mr. Wiseman: What road do you live on?

Mr. Wildman: He is so flexible that he builds roads in my riding that break up after six months of being built.

Mr. Chairman: We had better conclude this very quickly because there are other members.

Mr. Wildman: Surely, it is preferable to deal with issues like this in a public forum through public debate in a democratic fashion, rather than behind closed doors where bureaucrats and lawyers write regulations.

Mr. Long: I agree with that to some extent, but I would suggest maybe doing it this way, even outside a political committee. I think you might find that some shippers would be totally supportive of working with industry and trade for the Ontario government, and going down to these jurisdictions, not in a legislative or policy way, but saying, "Hey, we want to ensure that things are fair here." On the other hand, though, I look at the Ontario Trucking Association's newsletter. It should be very clear here that the Canadian carriers have access, interstate, throughout the United States.

Here is an ad: "Nationwide, common contract and broker; ICC authority for only US\$600: "Reed Transportation Services Inc. will prepare a complete ICC general commodities application that will allow you to obtain three pieces of ICC authority for the price of one, haul every type of freight anywhere in the US, to and from Canada. Charge your own rates. Keep all the revenue for yourself. Stop paying someone else a percentage to run under the authority."

We are worried about Ypsilanti to Dearborn here in terms of accessing that market, and about level playing fields and all these things. Our truckers, for almost nothing, can pick up a 48-state operating authority. They go before our shippers all the time in marketing discussions and negotiations and say, "Hey, we have a 48-state operating authority." They have all that, and then they are concerned about an encroachment into Ontario. I think this has to be looked at in terms of business volume potential if you are looking at reciprocity.

Mr. Wiseman: Some of the comments I had were the same as Mr. Wildman's, but you compared Alberta truckers going down into the United States, that they were benefited more by going into the United States than coming up into Alberta. I think what we have been hearing in Windsor the other day and from the truckers is that we all know Ontario is much more industrialized and that this market right here in Toronto is the lucrative market they are all after. So in that, I think we are really comparing apples and oranges, because you can only move so many cattle down into the United States. Most of the oil and gas companies have their own transportation up out of the United States to Alberta. I do not think we should put too much weight on that.

Going back to what Mr. Wildman said, the other thing was the reciprocity agreement and the part you read in about the truckers and why they just brought it in at this late stage. I think most of us were under the opinion that a reciprocity agreement was nonconstitutional, until a well-known firm to the government decided for the truckers that it was not unconstitutional. I think that is why it came forward as it has, because many of them, back when my colleague, George McCague, was sitting in the minister's chair, were looking at a reciprocity agreement and everyone thought at that time it was nonconstitutional. When you get a good legal firm saying it is constitutional, you have to go with that. I think anyone in the business—I am a small businessman—would like to see that level playing field as level as you can get it before you get into it.

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Mr. Long: Mr. Wiseman, can I comment on that? With regard to this legal opinion, I think if I tried hard enough, and maybe not very hard at all, I could get a legal opinion that would say it is unconstitutional. I think that association has used one law firm to render an opinion. It is a law firm that has certainly benefited greatly from the existing regime. I will just quote the last sentence of that legal opinion, "Needless to say, as this matter is one of great complexity, we would be delighted to respond to any questions that this letter may raise for you."

It has been presented like water off a duck's back that this is constitutional and can be done, by one legal firm. If you read the statement, they admit to the fact that it is a highly complicated area. As a layperson, I for one would think that in terms of moving this into legislation, we are talking about a trade issue; we are talking about a piece of provincial legislation here. I think the debate would go on till the cows come home on

this one before somebody would get a lucid position in terms of whether the province could do it. Politically, I do not think it would be advisable for the province to dabble in matters of foreign trade.

Mr. Wiseman: All right. I just know that this legal firm—I am no expert on legal affairs—as you mentioned, has done quite well with the present government. I understand it was one of the partners of our Attorney General (Mr. Scott). With what I hear about the Attorney General being a good lawyer and being from a reputable firm, I take it that it must be a good legal opinion. If I needed a lawyer when he was in private practice, I would have got him if I could have afforded him.

Mr. Wildman: You know what Shakespeare said about lawyers.

Mr. Wiseman: Yes.

Mr. Wiseman: Yesterday, I asked the shippers about their concerns and whether they would get out of the business and use that money to create more wealth within the business they knew how to operate. When I got to checking that last night when I got back to the office, I found that in the United States, many of them, instead of getting out of that business, have got into it. One of the excuses that was used as to why they were still in it was that it was good advertising value for them to have "Coke" on there, just as an example, or "Canada Packers," "Christie Cookies," or whatever, and that they were doing it for that advertising value. I was told they were getting out of that business, and instead of that they are into it in a bigger way in the United States.

Mr. Long: I will defer, maybe to Mr. Hughes or Mr. More if they want to make a comment on that. Just before that, I heard the debate yesterday. I think it is absolutely accurate, honest and true that when manufacturing shippers started the business of making shoes or whatever they were making, they wanted to do that, but as the service was not quite what they wanted, they adopted private fleets.

Now, if you are in a situation where you have this enormous investment in fleets, which probably you never wanted in the first place but you had to do it, another decision node comes along and you say: "Now that I've got this fleet, what should I do with it? Should I scrap it all? Should I maybe inject it into the system here in a deregulated environment?" Your point is well taken, I think. There is all that advertising on the trucks, but I think in the first instance the decision was made fundamentally because the service was not to the liking of the shipper.

Mr. Hughes: If I could add to that, I think you are absolutely right. There is an advertising factor in every private fleet; there is no question about that. But I think that at the time American industry looked at private fleets, the overwhelming argument was cost. It was just costing them too much to move their product. There was no question that there was a benefit in the advertising end of it.

What is happening now since deregulation in the United States—I suspect that to a degree the same will happen in Canada—is that those private fleets are becoming something different. They are recognizing that they have a competitive alternative out there, an alternative method of moving their product at a lesser cost because of deregulation, and I think the same will

probably happen in Canada. The advertising will not be worth the savings they are able to effect through additional competition.

Mr. Wiseman: That is the way I would hope it would work. Another thing that scared me yesterday was that 50 per cent, I believe the figure was yesterday, of that trucking market out there owned by that large group of shippers you were talking about yesterday, Mr. Smith.

I am a business person, too, in a small way. Is there any reason for us to believe that these people who already own this 50 per cent of the market, who are shipper-manufacturers, are waiting in the wings to maybe grab up some of these small people, like those we had here yesterday from the Guelph area who were worried they would grab them up once they got them in a vulnerable position with the banks or whatever, and get in even in a bigger way than they are at 50 per cent, maybe going up to 70 per cent or 75 per cent? This would be a definite businessman's decision to do that rather than what you have just mentioned, to get out of it and go into the business they know best, whether it is producing cookies, shoes or whatever.

Mr. Long: I think the issue you have touched on here is the one of concentration and the concerns about that, if they buy up these small companies. I think one part was maybe not concluded properly there. First, that number of eight and 69 per cent, as I read to you before, is not a problem supposedly, theoretically. If we look at the competition laws in place now, I think this buying out of firms and aggregating—with so many things, if you have a problem, there are laws to deal with that. If there are too many taking on a particular sector, you worry about it when the red light starts flashing and you have an analytical problem.

Until we get to the problem, and we are far from it at this point, I do not think we are—

Mr. Wiseman: I just felt that 50 per cent was—that red light was maybe going on.

Mr. Long: Sure.

Mr. Wiseman: There is just one other part. If the truckers, and I think they were being honest with us, are right, most of them said that in the last four or five years their rates have not increased. In fact, they had held pretty well their own on shipments, but—

Mr. More: After seeing what the US has done, and seeing, as we are now, that a lot of US carriers are here with licensing—certainly, more extraprovincially than interprovincially—what has happened really is that the Canadian carriers have been grooming themselves for deregulation for many years. They have the efficiencies I think they need to perform adequately under this new regime we are looking at today.

Mr. Wiseman: I was going back to the statement which was made that they have been—I do not know just the wording you had there, but it would lead me as a layperson to believe that the trucking industry was charging what the traffic would bear. Rather than what you said, what they were telling us is that they have been scaling down that price for the last four or five years and are competitive—I think some of them told us in Windsor—even after deregulation in the United States.

I did not want to leave that on the record if that is not right, that

the prices had been escalating, like the price of our goods, shoes or whatever commodities you people are in, that they have been increasing in the last five years. The charges in the trucking industry, from what they told us, have been stable, and that is with their fuel costs, as we know, and wages going up.

Mr. More: I think you will find that stability has been created because they have designed a much more efficient system. They have eliminated a lot of backhauls. We have heard today that there is obviously some more backhaul there, but I think if we go back five or 10 years, we would find their efficiency was nowhere near what it is today. The companies that probably could not have survived in a new regime have already been amalgamated into a very efficient system, which I think can only get more efficient.

Mr. Wiseman: The only thing was that—

Mr. Chairman: Mr. Wiseman, there are two opposition members—

Mr. Wiseman: —just in their presentation, it meant that it was increasing in price like the price of our goods, where it has not been. I am glad that is cleared up, that the truckers have not been gouging the public.

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Mr. Chairman: Is that all, Mr. Wiseman?

Mr. Wiseman: Yes.

Mr. Chairman: Okay. The two opposition parties have used up an enormous amount of time, so we will give the remaining 10 minutes to the government members, for the next 10 minutes. Then we have another presenter this morning, so we had better move on. Mr. McGuigan.

Mr. McGuigan: Thank you, Mr. Chairman. Mr. Long, you mentioned that the carriers get together and set tariff rates. I wonder if you can just give us the background. How do they avoid competition law, and so on? Are there special exemptions for them?

Mr. Long: No, there are not exemptions. There are in the United States, but there are not in Canada. I have appeared before the Niagara Frontier Tariff Bureau, Inc., and the Canadian Transport Tariff Bureau Association, CTTBA as it is called, and essentially, there are a number of truckers, all truckers, members of these groups, who sit around the table.

Mr. McGuigan: It is not railways you are talking about?

Mr. Long: No, it is strictly truckers who sit around a table. There may be as many as 18 of them in the room. The shippers are given an opportunity to come before them and to speak to them about a proposed increase—I do not want to quote specifics—of about six per cent, seven per cent, eight per cent, whatever it may be, and the shipper is allowed to speak and talk about why it should only be four or two or one or nothing, or whatever it may be.

All of the information, usually the cards on the operating statistics, are in the hands of the trucking companies and a resolution is arrived at. That resolution is invariably based on a prescribed, guaranteed rate of return. Now, to make it very clear, these are usually on what is called

general freight rate increases. There are certain increases that shippers can flag out of or carriers can flag out of. In other words, they may have a separate deal with a shipper and they do not want to have to charge the rates that are in the tariff. So there are exemptions to this—not everybody.

But a lot of the small freight, general freight, that is moved around this province, is definitely subject to these increases. It is a one-sided deal and there is no exemption. I can tell you that the combines investigation people have been following this one like a hawk for years, but they have not moved yet on it.

Mr. McGuigan: That is kind of news to us. In the United States, where the competition laws are much tougher than ours, they have an exemption there, do they?

Mr. Long: Immune from antitrust legislation, as it is called, immunity.

Mr. McGuigan: It is surprising, because I was in a meeting in Michigan one time where a bunch of farmers were talking about doing these things, and somebody jumped up and he said, "You know, every one of you could be in prison for even talking about this." It was the Sherman Act.

Mr. Long: That is it, yes.

Mr. McGuigan: And that ended the conversation right there. In looking at the legislation and the clause about it being deemed to be contrary to the public interests of Ontario, we have bandied this around a great deal. Can you give an example, or do you know of an example? Perhaps you are the wrong people to be asked this, but do you know an example of what would be against the public interest of the people of Ontario?

Mr. Long: That is a tough one. I would not want to try to precede the legal determination or even the political determination of that sort of issue. I do not know—like something catastrophic that might occur to the province from a military standpoint, perhaps, something like that.

Mr. More: I think you could think of something like the United Parcel Services sort of scenario where, if you have a relatively immature area, which the courier business was at that time, I think something like that should be looked at from an overview, then that public interest could be very critical, because I think it was more immature than the US counterpart was at that time and I think that the service and rates could have very easily taken care of a lot of Canadian couriers and put them out of business.

So that kind of thing could be, I think, construed as contrary to public interest. Whether it is deemed that way, who knows? But that test should come into play.

Mr. McGuigan: That is very interesting. Thank you very much.

Mr. Chairman: Thank you, Mr. McGuigan. Mr. Carrothers.

Mr. Carrothers: Thank you, Mr. Chairman. Mr. Hughes, you mentioned freight consolidators. That was a new concept to me, I guess almost the third player that seems to be coming into play in the United States. How exactly do they carry out their business? Do they run small fleets of trucks, taking things to larger companies' warehouses? Do they run small warehouses of their

own? What exactly do they do?

Mr. Hughes: Okay, a freight consolidator essentially operates in a way very, very similar to a less-than-truckload carrier, or an LTL freight forwarder, as we know them in Ontario. For example, an Apex forwarder will have a terminal very, very similar to a truck terminal where either LTL shipments are tendered to him at that terminal, or he will have a fleet of pick up and delivery trucks which consolidate those into truckloads.

He then turns those truckloads over for line haul to a public carrier to haul for him from point A to point B. For example, if he were in Barrie he may be consolidating for Toronto, Windsor, the American border—Buffalo, for example—Sarnia, all of these points. He may even be consolidating for Kitchener and London and the outlying areas from Barrie. He will consolidate trailer loads of LTL traffic and tender them to a public carrier.

Now those statistics of LTL traffic will only show up, however, in truck load traffic. They will not show up in LTL traffic, principally because he is not transporting that LTL traffic from Barrie to Kitchener. The public carrier is doing that for him. He will deliver it at the other point, or he may tender it to another consolidator in London or Sarnia, wherever, to deliver it for him at that point.

Mr. Carrothers: Would some LTL carriers have turned themselves into these freight consolidators, or was it a completely new business?

Mr. Hughes: Primarily, it is a new business. It is a new business concept. While there were shipper associations prior to that, they are now termed as consolidators, but where the numbers have changed, they have gone from numbers down here to numbers somewhere up here.

Mr. McGuigan: May I interject? Surely even a shipper can act as a consolidator. I was shipping apples to Winnipeg and I could not get quite a full load in my weekly shipment, and I was paying three cents a pound to ship this stuff to Winnipeg.

A friend of mine in the grain business had a standing order for so many beans to Winnipeg at two and one half cents a pound. I said, "Jim, you can fill up the load with beans any time you want to, for two and half cents a pound." I lost a half a cent a pound on the beans, but I saved myself two and a half cents a pound.

Mr. Wildman: As long as you were not mixing apples and oranges.

Mr. McGuigan: Apples and beans. I was a consolidator.

Mr. Hughes: I should explain that in some instances these consolidators' rates for moving that LTL shipment, by shipping on the truckload rate, particularly in a long haul, are a savings to that LTL shipper, as in the case of Mr. McGuigan.

Mr. Carrothers: So would it be fair to say that many of them are small operators, small businesses, almost?

Mr. Hughes: The consolidators? Oh, very definitely. The consolidators are a small business. They are a small business in the centres that they operate in.

Mr. Carrothers: It is almost an opportunity that they—

Mr. Hughes: Yes, it is.

Mr. Carrothers: Thank you.

Mr. McGuigan: I should have kept that—

Mr. Chairman: Okay. Mr. Smith.

Mr. Smith: Thank you, Mr. Chairman. First of all, I want to commend you on your presentation. You certainly seem to have a tremendous handle on the issues. But you made a statement in here, on page 15, that Texas was the most highly-regulated US state.

Do you get a sense or a feel that, because the Texans learned too late that they were losing warehouses, that the rest of the states are going to open up quickly or do you still feel that regulation is there for quite a few years ahead yet? What is your feeling on that?

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Mr. Long: I think our policy director, Joseph Dion, probably has the answer. He has been tracing that recently.

Mr. Dion: It was an extreme situation in Texas, and really the people who moved for deregulation there were the real estate people, because they found the warehouses were moving out. There is a group of shippers there called TEXAID. They have lobbied, and the laws are beginning to open up there, as well as in Georgia, I believe, which was a similar situation.

Mr. Smith: So you feel it may not be too long before they realize they all have to open up, or do you still think there will be some— We have this right around Ontario. I believe all the states are still regulated intrastate sort of tightly; this is what I understand, anyway. But do you get a feeling that they are going to start to loosen up or open up quickly?

Mr. Long: I would say they are. I think the report I read earlier suggested that because of the federally regulated interstate situation, it said in that report that many of the states were starting to think about this, particularly in terms of the benefits that have accrued on an interstate basis. But I cannot tell you honestly that Michigan is doing it.

Mr. More: I think it is fair to say, though, that if we show any sign of unfair treatment to a US carrier versus our Canadian carriers, we will not get any intrastate licensing for our Canadian carriers. They very much want to be able to compete intrastate, and if we cannot open the borders to them, we certainly cannot expect them to open them to us.

Mr. Long: The flip side of reciprocity is discrimination.

Mr. Chairman: Mr. Long, thank you very much to you and your colleagues for coming before the committee. We do appreciate it.

Mr. Long: Thank you very much.

Mr. Chairman: We certainly know your position on the bills.

Mr. Long: Thank you.

Mr. Chairman: Our next presentation is from Terry Goodwin, who is a transportation consultant. If members can restrain themselves from making jokes about consultants, I am sure we will be informed by Mr. Goodwin.

Mr. Goodwin, welcome back to the committee. You were here last June, I believe, in 1987?

TERRY GOODWIN

Mr. Goodwin: Yes, sir, I was, and I am very pleased to see that many of the concerns I expressed at that time have been looked after in the present legislation. I just wish that a few more could be addressed, because it is a very, very serious matter. I also feel rather privileged to be able to listen to the Canadian Industrial Transportation League this morning, because I may have some comments after I get through with what I had prepared about some of the things that have been presented by them. Some of them are extremely misleading, I might add.

I should explain that my name is Terry Goodwin. I reside in Thornhill. I am a transportation consultant. That is on the freight side, not the kind that the ministry employs to decide how they design Highway 400 and the rest of the things like that, or Highway 407. I might add that I have been very much concerned and involved at times with what the ministry has been doing on Highway 407. I know the history of it and I am certainly glad that they are going ahead. But being very good engineers does not necessarily qualify them in the field of transportation economics, and I think that is one of the things we should be talking about here today.

I should explain that I served in the Royal Canadian Air Force as a bomber pilot overseas for approximately three years there and another year here. Then I was in the air freight business flying cattle down to South America for some five years, so that I have been at that business. I recognize that you can be innovative, and I think certainly over my time span I have been.

In the 1950s when the dollars gave out in South America, I got in the trucking business here, and I was involved with some of the first operations to and from western Canada. For the first two years in the 1950s we had no regulation extraprovincially.

The Winters case certainly made it impractical for anybody to do anything. The firm I was with at the time was licensed, but umpteen others came and went. Some shippers had exceptional trouble in that time because their loads were in one case abandoned on the streets of Winnipeg.

I think it is something one should be very careful about, reverting and going backwards into a time when the bankruptcy courts were the final licensing body. Lawyers are not cheap at any time, but they and the accountants sure make a bundle when you go through the bankruptcy courts. Fortunately, I have not had to do that.

I might say, because of my age I am looking forward to retiring, and therefore I make the comments that I make objectively. I do not feel that I am under the compunction that may be there for some people at OTA who may have to say exactly what their members tell them, who will say in that case, "I just want something more for me."

I think the ministry is on record, at least orally to me, that deregulation is not going to make any more freight for anybody. Freight moves because somebody wants it. It is a derived service, as the Canadian Industrial Transportation League said in Ottawa. I think they said it a year ago here. By that they were inferring that if somebody does not do it, somebody else will come along. Continuous turnover in any form of business is not good. It is not efficient.

I should also point out that I served on the old Vaughan school board and I was on Vaughan council for some four years. I am not now, but I think I know something about need.

I should also point out that my pilot experience taught me many things, but one particular thing. That is, if you make mistakes you hope you are around for the next time, but you do not want to make it the next time. When somebody else makes mistakes you try to find out exactly what those are so that you do not make them. So we can sit here and look and see what the Americans do and do not do. That is fine and dandy.

I say here in the third paragraph that Bills 87 and 88 are before you. Bill 86, the Highway Traffic Amendment Act has been passed and the Legislature should be commended for doing so promptly, but I have some real reservations about the procedure of not proclaiming it. One noteworthy point about Bill 86 is that it does define commercial vehicle operator's registration which, I pointed out a year ago, the previous bill had overlooked. So I say there is some real progress being made.

One of the most glaring omissions in Bill 86, which does show up in Bill 88 as section 20, is on insurance. I think, on that particular concern, we should take as an example the court decision which came out as a criminal result from the accident at Highway 7 and Yonge Street. I guess the accident occurred over a year ago.

A truck that was allegedly operating as a private carrier, allegedly returning from Newfoundland with a load of lumber, ran out of brakes and killed two people. The trucking company promptly went broke and the people concerned received sentences, I believe one of them for a year and one of them for half a year, but the \$1 million fine went against a bankrupt company.

That was in the newspaper. I have not seen anything that the ministry has done further to try to use that as encouragement to people to avoid some of these things. It was basically dictated by economics. We should come back to that a little bit later.

We should talk about insurance. Presently my understanding is that you are only required to have \$200,000 insurance on these vehicles for public liability and property damage, the same as you do on your car. I would suggest that most of you, if you look at your policies, long ago discovered that \$200,000 for a car is peanuts, so you take it up to \$1 million; if you have not, your insurance agent should have told you that. Then you find out that to go up to \$2 million is comparative peanuts, and it certainly makes you sleep easier at night.

1130

For trucks, I suggested \$2 million a year ago. Mr. Norton of Kraft, who made a presentation for CITL at that time, suggested that his firm would not hire anybody unless they had \$5 million. He said that to me personally

afterwards. The American company got caught for \$3.4 million, he said, because it had its goods on some particular truck.

I was hoping that Mr. Hughes, when he was speaking here—and I do not see him staying—would have carried that forward. He mentioned to me some three years ago, and again earlier this week, his knowledge of a situation in Detroit. I believe it was Ford Motor that told him this. They contracted for 134 loads coming into Detroit with a carrier that was responsible, that had been around for quite a while and with which they had experience. Everything went fine until halfway through.

One night the carrier happened to be overloaded to Detroit; so it asked another, smaller carrier, one of its friends, to pull that particular trailer. That company happened to be using a broker, an owner-operator. This man went asleep at the wheel, crossed the median on one of the expressways and took out a Greyhound bus. He lived. He declared bankruptcy, the medium carrier declared bankruptcy and the larger prime carrier declared bankruptcy. Ford Motor was left facing a suit for \$29 million. I do not know what has happened to that. Sometimes one thinks of a move just a little bit too fast.

I suggested before, and Tom Smith, who was then assistant deputy, had said, that insurance requirements would be a good method of enforcement, but again the ministerial staff has seemed to ignore that. I would simply suggest that there is no reason why all commercial vehicles should not be covered by a responsible level of PL and PD insurance. It may start out at \$2 million, but it will work up shortly afterwards. It is available. I know that one major operator who has other interests actually has coverage today of \$25 million; that is from Royal Insurance, so it is perfectly available, providing you are a responsible operator.

I like subsection 4, Ontario agent. That is one of the things I asked for. It specifically helps the enforcement people try to get hold of a person they want to talk to. I do not see why it should just be for-hire vehicles that are involved in that. I am just so concerned about the pseudo-private carriage that goes on. I just think it should be brought in and should be applicable for all requirements.

Then we come along to this question of fitness. This is one that bothers me very much because there is no requirement for what I call moral integrity. To explain that, I should go back to quite a few years ago when Mr. Shoniker was chairman of the transport board.

A carrier from Edmonton, which was a household goods carrier, came in to get licensed. It turned out that he had been charged, I believe it was twice, for falsifying his bills of lading. In other words, when he weighed the goods, and let's say they weighed 5,000 pounds, he made sure it was 7,000 pounds so he would get more money. After some discussion and a little slap on the wrist, he got licensed. So the present or past regime is not completely free.

I suggest that when somebody does something like that which is not of moral integrity, or perjures himself in front of the board or does something else like that, there should be some mechanism for saying to such people, the same as you say to a security salesman, "No; stay away from the business."

I think there should be a question of unfitness as far as moral integrity is concerned, and I think there is a requirement that it be shown to be financially viable as well.

In the case of somebody working specifically for a large shipper, who is going to pay him every week, that may mean he would need, say, one month's operating capital because he is going to have some ups and downs in his expenses. Somebody else in the LTL business might be required to show that he had three months' worth. It will vary. But he should show that he can do what he proposes to do; otherwise, he will go in—and trucking is very price-sensitive—and corner a share of the market. A larger firm which may be operating perfectly all right will have to stand a loss for a while until this man goes under. That is not in the public interest. Of course, you may have a very large organization.

Just recently I was down in Ottawa, and on the streets of Ottawa I saw some short trailers, which appeared to be pickup trailers, and they said "Canadian Freightways" on them. That is a company from Alberta. They came into Ontario and started a forwarding operation—have never been charged—by loading other trailers for other people over the road or piggyback. I saw them down in Ottawa. I do not know—I did not get any numbers; there was not any chance to do that—whether those people are legal or not. I do not think they are. There is Canadian Freightways Eastern in Hamilton, which is a separate company, but they are both part of the huge Consolidated Freightways Inc. operation in the United States.

We will find that our American friends will be here all over us. I was told by Mrs. Sharp on the phone one time, "Don't worry about them; they're here already." What has happened in the past half-dozen or dozen years that the situation has permitted or encouraged American carriers to come in has certainly scared the major responsible Canadian capital, be they the people who owned Inter-City, be they the people who owned Direct Winters, be they the people who owned DomCon or be they the people who owned Kingsway twice now. I should name two or three others which I, slip of the tongue, cannot remember right now. But that capital, most of it indigenous Canadian capital, has been chased out of the business; when I say "chased out," I mean they have picked up their marbles and left because they knew there was nothing left for them. I do not think that is a good practice.

I submit that what the carriers were doing here was modern and very competitive, and I would suggest those particular carriers—I do not have their safety records in front of me—are the best.

Enough about fitness. You do have, of course, the question of large carriers and whether or not they are going to come in and be predatory. One of the largest ones, which is owned overseas and which is in business here and in the rest of North America and elsewhere, has been noted for its predatory pricing in Australia at some time. I do not have the details; I do not know them, but it has been fairly well documented. We have quite a bit of this that has to be faced in the industry.

It is not just from the ownership point of view; it is from the net result to the individual user of these services. There will not be any more goods moved. Whether or not the gross costs go down, I am not prepared to say. I think they may go down in very short order, but as the monopoly or oligarchy takes hold, they will then have the opportunity of going up.

1140

In that regard, the Canadian Industrial Transport League, while they were talking about \$148 billion or \$160 billion, I did not pick up what their total costs in transportation were. I think they would have been very

informative figures because you would get individual operations such as coal mines and gravel pits with maybe a very high proportion, but you also come down to the run-of-the-mill person who may be only two per cent, three per cent or four per cent, maybe less. Some years ago, one well-known chain store told me: "Yes, ours is two per cent right across the whole of Canada."

We are the lowest division in North America for cost that way except for New York City. That speaks an awful lot for the linear type of transportation we have across the whole country. It is quite efficient that way. We are quite efficient here in southern Ontario. Just because somebody cannot get 25 cents a hundred cheaper on the rate is not a capital issue.

On fitness, reasonable ground for belief that the transportation service will not be operated in accordance and so forth, I think there should be some effort to show that it would.

Section 8, page 13: The registrar becomes the rubber stamp on this whole thing. It just means that the judgement of the board is being replaced by a recommendation of some nameless junior in the registrar's department who looks at a piece of paper; if it is properly filled in, that is it. The board cannot do anything about that. I have some other concerns there.

They have recognized what a forwarder is. For those people who do not recognize what a forwarder is, you have Apex here, normally within Ontario, but it operates to Montreal as well. They contract with a carrier and it is essentially a one-way haul. But you also have forwarders here—pool car operators; we call them—who historically have been operating to and from western Canada, eastern Canada and Montreal.

Just as a matter of trying to keep the marketplace honest, to use that word, I think the truckers should have some assurance that there is going to be a level playing field. Right now, today—I have no figures; I wish there were, and I can speak about that maybe a little bit later—I suspect there are probably close to 100 pool cars loaded here every night on the railroad to western and eastern Canada. I suspect that it is about the same number of trucks that are loaded out.

But we have no such statistics so far, and I think it would be appropriate to modify Bill 88 so that we have some statistics or that regulations can be made requiring submissions. Then you are not guessing so much. Right now we are like a pilot flying blind in a fog and a cloud with no instruments. We do not know what we are doing as far as regulation here is concerned, when we say it is necessary for this or it is necessary for that, because we do not have the numbers.

Incidentally, on the accident basis, I understood some figures were going to come forward on accidents, but I have not seen them yet, as to which ones trucks are involved in, which would be a fairly large proportion. But my understanding is that it is probably a much lower proportion where the truck is at fault and an even lower proportion where it is an out-of-town vehicle on a longer haul. Some of these things we have to get our hands on. I think the ministry was working on that several years ago. I hope they brought it forward.

The CITL talked about something from the United States. I would just like to read a very short portion of an article. You can take the date on this. This is Forbes, August 22, 1988, and I am reading from page 98. It is a one-page article on Consolidated Freightways. As it goes through, it talks about how large they are and it says their total profits have increased, even though their margin has decreased.

The chairman told his shareholders this spring, "In less than a decade, 54 per cent of the full-service common carriers have gone out of business." I think Mr. Hughes's explanation may be part of that, but I would suggest that the carriers have actually gone out of business. "Freightways remains the biggest and most profitable of the Big Three less-than-truckload companies. Others are Akron-based Roadway Services, Overland Park; Kansas-based Yellow Freight System."

Those are the three they point out. I would point out that all three of those companies are here in southern Ontario now. Canadian Freightways in Alberta has been there in a deregulated atmosphere for quite a few years, and it has been a good returning division for that gross company.

I think there are several sides to it. They tell you their margins fell to 3.3 per cent. If you look in the stock reports, while their stock was selling for about \$30, they were paying a 98-cent dividend, which is a yield of about three per cent. The price-earnings ratio is somewhere around 15 per cent.

I should correct what CITL said, that there is a guaranteed rate of return at Canadian Transport Tariff Bureau Association or somewhere else. I think Mr. Long knows that is contrary to fact, and I am sorry if he tries to mislead this committee that way. There is no guaranteed return. Bell Canada, Interprovincial Pipe Line and the rest of the people regulated in Ottawa are allowed something like 13 per cent or 14 per cent, it depends, but no trucking company has any guarantee at all, and it is wilfully misleading to suggest otherwise.

Mr. Long spoke about what was going on at CTTBA and the lack of combines prosecution. What he did not tell you was that the combines people went after the Western Tariff Bureau about 10 or 12 years ago for things that happened as long as 30 years ago. Alberta was the only province at that time that was not requiring rates to be filed; Saskatchewan and Manitoba were regulating the rates. So they felt they could go after anything that happened in Alberta.

That sort of bothers me, because the list of names of people who were shown were some of the people I knew from way back when, some of them retired. Who is going to pay their legal bills and so on? They went after them under the Combines Investigation Act. Earlier this year, there was a consent decree entered into between the federal ministry and some of the members which seemed to satisfy a lot of people. I am not so sure whether it would or should, but apparently it did.

1150.

The Canadian Transport Tariff Bureau Association recently received a letter from the combines people in Ottawa saying, "If you do thus and so and do thus and so, we feel you are operating properly." Those conditions are very similar to those in the consent decree. If there were not that consent decree, I would be very worried about a letter like that, because somebody can write a different letter tomorrow.

It also follows the situation in the United States as now practised by the Niagara bureau. What it does in a sense is collect a certain number of figures. They find out when a group of carriers or an executive committee feels it needs an increase. Then they go ahead and say, "Well, we would recommend it." But each carrier now has to flag in instead of flagging out.

I am not too sure about it. It is applying initially on the smaller LTL shipments, on those scales of rates, and increases have been filed for September 4, but in collecting some of these numbers, they did not collect from every carrier. Maybe it is high time this committee recommend to the ministry that with all this deregulation going on and so on, you still need to know what is going on out there and people should be required to file some form of financial statement, which I would simply suggest should not be incompatible with the major sections under the Interstate Commerce Commission one, simply because people have to file in both places.

This letter they sent out on July 14 to carriers showed that carriers that were operating at 100 per cent or over of their operating ratio—operating ratios are the gross revenues less the gross expenses, excluding taxes, excluding interest charges. That is different from what Roadway was talking about, which is actual yield and payable out after tax. It says down here that expenses and operating ratios are prior to interest and taxes; inclusion of interest and taxes will decrease the operating ratios approximately two points.

That is for well-established carriers that are not involved in a leveraged buyout, which is what is happening in a lot of cases now, because when somebody goes out of business you do not just have somebody else with that pot of money; he has to go to the bank and borrow it. So there is quite a bit involved there.

It gives the operating ratio in the fourth quarter of 1987, and of those operating 100 per cent and over, there was 41 per cent; 97 to 99 per cent was 34.5 per cent; 93 to 96 per cent was 23 per cent; and you get on down to 0.3s and 0.3s. In the first quarter of 1988, 47 per cent are over the 100 per cent; 34 per cent are over 97; 17 per cent are over 93. It is dangerous. No wonder the carriers felt they needed some money.

I suggest that until we have these statistics on a proper basis, this committee can say: "Look, we have real confidence in this. We're not just going to some industry figures and so on."

I think we are talking—we really do not know. I certainly have confidence in these numbers. I know where they come from. I do not know all the carriers that are reporting or the carriers that are not reporting. They do not seem to want to give that away. American carriers have had to report for donkey's years. I just think it helps, and helps an awful lot.

I want to go back to some comment that was made about some statistics from Highway 400 and the empty trucks and so on. I do not know what they are talking about there; I sincerely do not know. But I would suggest that a large proportion of the empty northbound trucks are trucks which have come down south, they are four-axle or five-axle trailers where they are A or B train, and they have hauled lumber southbound and are able to compete with the railroad on that basis. I do not think the railroad has been at all aggressive in trying to get back that lumber business it has lost. I recognize trucks can do something railroads cannot do and I think they should get a premium for it, but the province has to pick up the deficit on the Ontario Northland Railway.

I should point out something else that happened. Back at the beginning of this year or late last year, there was an application by one Brazeau Transport Group for an added authority here in Ontario. That was a direct descendant of, among other things, the DomCon operation in northeastern Ontario. That application was turned down by the Ontario Highway Transport

Board, but was granted by cabinet on the recommendation of ministry staff. Concurrent with that, Brazeau was in financial trouble, had to close all the terminals in northern Ontario and operate as much as it could from Quebec.

Brazeau is still on the road now, but we have somebody making these recommendations in the ministry, going up through the things that various people have to put their initials on, that led that licence to be granted by cabinet. In other words, some people are well away from what is going on. I do not have it in front of me as a piece of paper; I do not have this evidence. I have to do something else. I do not want to do anything else. I suggest those people are an actual menace to this province, to the people in this province and to the business in this province.

I think that is about what I have to say. I have thought about some other things. I am not sure how helpful they could be, but I am very ready to answer any questions and I would be very glad to help the committee, because it is a very serious thing. I have suggested here that all parties get together and simply recommend that some of these things be done to amend Bill 86 or a new bill to straighten out Bill 86, to make sure that all trucks are safety oriented, instead of just the for-hire people, and that they all carry a proper level of insurance.

I think that is something, basic safety, which everybody can look at here. They could have done it a year ago if they had wanted to. Somebody in the ministry is stalling things. That is where you place the blame. I wish the minister were here right now to hear me say that, because I know he is a very genuine person, but he has been misled by some of his own people, not necessarily at the first or second level below him but well below that. Where it has got to, how it has come up, I cannot say because I have not been inside. I have done enough that I recognize something is seriously wrong.

I think that is enough.

The Vice-Chairman: We have the assistant deputy minister here. Perhaps you would like to respond.

Ms. Kelch: I would. First and foremost, the insurance issue: Mr. Goodwin and I personally have had this discussion in the past. We are aware of the points he is putting forward and we fully agree that the current levels are too low. As I have indicated to him in the past, it was purely an issue of which piece of legislation would in fact contain the increase.

At one time, we thought it might be the Insurance Act, but through our administrative processes and investigation, we found out that is not possible, so there will be an amendment to the Highway Traffic Act indicating that Ontario will require a \$2-million minimum for dangerous goods movement, for PL and PD—public liability and property damage—and a \$1-million minimum for general freight haulage. That will be an amendment to the Highway Traffic Act when it is possible for the minister to make that kind of change.

1200

Mr. Goodwin: May I ask, is that PL and PD?

Ms. Kelch: Yes, it is.

Mr. Goodwin: Okay, that is where it should go and I feel very happy. If I have accomplished nothing else, just by putting a burr under the saddle

on that one, I have accomplished a great deal. In time, I think they may want to increase that.

Ms. Kelch: Mr. Chairman, there are other points of clarification we could make, but due to the time, you may want to entertain questions from the committee first, and then if there is a little bit of time remaining, perhaps we can offer those.

The Vice-Chairman: We will go until 12:25 p.m., because we started late, if that is acceptable to the members.

Mr. McGuigan: Mr. Goodwin, we certainly appreciate your experience in the industry and your remarks. I would like to clarify my position, though, as far as Mr. Long's remarks about guarantees are concerned. I took the guarantee to mean that they set a rate whereby a well-organized and well-financed organization could make, say, 14 or 15 per cent, that it was not in the terms of a bond or something, and that in literal terms would guarantee it. At least that is the way I took it.

On your statement about financing, I have wrestled with this in my own mind. Recognizing that there are people out on the road who, from a financial standpoint, perhaps you could make a judgement should not be there, as long as we are containing the safety angle through inspections and that sort of thing—I know there are arguments whether or not that can be done—and assuming we look after the inspection angle, belonging to the so-called free enterprise system that we do, is it not better to let the bankers make those financial decisions rather than us? They are kind of tough. I hesitate to use in Hansard the words I might use otherwise.

The Vice-Chairman: I think you had better not.

Mr. McGuigan: They are tough guys. Are they not in a better position to do this than we are? I realize as an individual MPP that if the ministry people turn my neighbour down because of finances, that guy or that woman is going to be over at me, saying, "Hey, you people can't do this to me." Do you not think the bankers are better people to do that than we are?

Mr. Goodwin: Mr. McGuigan, what you thought Mr. Long was saying was I believe what he intended to say. There is still no guarantee in any shape or form.

Mr. McGuigan: I accept that.

Mr. Goodwin: It has been the history of the industry that there has been a certain turnover all the time. I am simply suggesting that whether it is a large or a small company, maintenance is one thing that tends to get slighted. You have to pay the fuel bill because they will not give you the fuel next time, but the tires—look at the tires on your own car and see when you figure they have to be changed. It is the same sort of thing. You put the pressure on and something goes.

Mr. Snow recognized that. He got dump trucks regulated. It is beyond my comprehension—other people have tried too—why if he had to regulate dump trucks and not deregulate them on the rewrite, that same concern with safety should not apply to other things. I think the one on Yonge Street that I referred to is a fair example. I was talking about the one I witnessed a year ago at the next intersection on Highway 7 a mile and a quarter from there.

You have to be tougher on it. I am glad the department hired 20 about 18 months ago. It has approval for another 20. I hope they have those for inspectors. They will find things, but they will find them in the major carriers where they have yards where they can go and get them. They will have trouble until they have all this business of proper addresses and private carriage, so they can go at those as well. It is going to take a long time. I am not so sure we have a long time to wait on it.

Mr. McGuigan: On that point, are you aware that they recently opened a station on Highway 401? It is actually in my riding near Windsor. It is an inspection station, not just a way station. It is going to cost \$2 million. They have a large holding area and rooms out there for inspectors to work and so on. It is far more than just a way station. I understand they are opening more. Will those answer the safety question or do you have to have other things?

Mr. Goodwin: I was not aware that one was open. I can only applaud it. I suggest that if they are really concerned about what is going on, they should go into the yards of the Canadian truckers in Windsor and look at the condition of the American trailers that are there. That is a result of a comment made to me eight or nine months ago that the condition of the trailers offered by American carriers to the Canadian carriers is no good, that they are rather poor; let's put it that way.

I am not saying they are all that way, but back in the early 1950s when there was no Trans-Canada Highway, we operated through the United States in bond. We paid our fines because we did not have the flares with the full coal oil. A little bit was done and so on. Your brake drum gets cracked. You have to replace it. They went after us pretty hard.

I can only applaud it, as long as you do not get a queue of 20 vehicles waiting to go through something. I think queue time is killing. I think that probably a lot of it can be done in-house. I know they have done some more in-house work at Downsview, making more effort that way, but I think there is a long way to go.

Mr. McGuigan: You mentioned the point of the poor trucks in Windsor. We had Vickard Brothers telling how they had turned down a lot of the trailers they see in Windsor. I wonder if that is not a function of American carriers shooting their old equipment into that Detroit-Windsor bridge hop, realizing that in Detroit and in Windsor they are under city police, and are not liable to get into too much contact with highway authorities. From your experience, is there anything to my scenario?

Mr. Goodwin: I was at Windsor-Detroit for about four years in the latter part of the 1950s. I would hate to make any such guess. I am not saying it does not happen. It could happen. A lot of the trailers that are apparently involved would come in from Chicago and elsewhere.

Mr. McGuigan: So they would have been on a highway.

Mr. Goodwin: They would have been on a highway in the United States. I am quite agreeable with your theory that when the Americans do not know what to do with something, they kick it over the border. I am quite aware of that. I was born in the US and educated in the US before I joined the air force here. I am quite aware of some of the things that may go on. You are in vegetable country and you know that when they have too many onions for the Chicago market, they will dump them on the Toronto market. That is the way

things generally go. They are now apparently going to do that with used cars too.

Mr. McGuigan: I wondered if that was a factor.

Mr. Goodwin: I cannot tell you one way or the other.

The Vice-Chairman: The member for Mississauga South.

Mrs. Marland: Yes. With such formality, Mr. Chairman. Mr. Goodwin, I say this with respect. I was just a little concerned when you suggested that the minister's staff had been misleading him. I say it with respect because I recognize that that is your opinion, and for that reason I would like to have the assistant deputy minister make her comments, which I am sure have arisen from Mr. Goodwin's statements.

Mr. Chairman: Okay. Ms. Kelch, would you like to do so?

Ms. Kelch: If I may, what I would like to do is address directly the accusation that Mr. Goodwin has made of myself and my staff. In no way have we ever misled the minister on the issues that are before us here. All of those issues, as Mr. Goodwin well knows, have been in the debate on the package of bills for some considerable number of years, and yes, we have had discussions on all of the ramifications that he describes. I think it would be valuable if we could take a few minutes, though, to have the minister's director of legal services address specifically some of the issues that Mr. Goodwin has put on the table just so the committee is aware of our perspective.

Mr. McCombe: Insurance has been dealt with. The next item raised by Mr. Goodwin was the Ontario agent provision, which we have added to Bill 88. Not recognizing that we were dealing with the Highway Traffic Act, I did not bring it with me, but the reason Bill 86 did not deal with the matters Mr. Goodwin brought up was that I believe they are dealt with. One, for decades on the civil liability side, the registrar of motor vehicles is the agent for everyone from out of the province. If you want to sue someone from out of the province with whom you are involved in an accident, that can be done through the agency of the registrar. If it is an offence, we amended the Highway Traffic Act a couple of years ago to make every driver of a commercial motor vehicle the agent of the owner-operator of that vehicle, so that agency already exists.

With regard to moral integrity, now in the future, as in the past, if you examine clause 27(2)(b) of the act, one of the grounds for suspending or cancelling a licence is "misconduct or lack of integrity or honesty by the licensee in carrying on the transportation service," which I think is what Mr. Goodwin was getting at.

With regard to the fitness test, subsection 6(4) states that fitness will be determined in the light of the past conduct of the applicant, which may well be reflected by convictions under a very long list of statutes, not all of which are directly motor vehicle statutes, and such other matters as are prescribed. So I would suggest that the act does deal with honesty and integrity.

On the wording on fitness, the word "not" rather than the obverse, that is the time-tested wording that has been in the Public Commercial Vehicles

Act; I do not know whether it goes back to 1928 or not. It is much more appropriate, I would suggest, and easier to prove a fact than a nonfact.

With regard to whether section 8 is necessary, we as a committee have heard this week of the concern of owners of operating licences when they die about what is going to happen to their children, because their licence disappears. I did mention the six-month provision with regard to estates, but the other safeguard is the ability to issue a temporary licence in situations akin to that where, by action of law, something has happened, whether it is a share transfer, and the act says the licence disappears. It may very well be appropriate to issue a temporary licence, and that is the reason for section 8 being there.

Section 27, the suspension or cancellation: should this be done by the registrar? It has in the past been the minister, not the board, but that is only the action of instigating a proposed suspension or cancellation. Under section 28 it is the board's function to hear the representations, evidence of the licensee, and to advise as to what should happen. So that responsibility does not leave the board.

The issue of financial statements was brought up by Mr. Goodwin, the regulation-making powers, paragraph 41(1)23, "prescribing the contents of documents and financial statements providing for their filing with the registrar or the board."

Financial statements are currently required on an ongoing basis and they will be in the future, most particularly because the ministry is interested, for its own purposes and also for the purposes of the advisory committee which is established under this act, to have financial details, operating details, so that the effect of Bill 88 can be monitored on an ongoing basis, so provision is made. Those are highlights.

The Vice-Chairman: Thank you. Mrs. Marland, did you have further comments?

Mrs. Marland: No, I just wanted that on the record. Thank you.

Mr. Smith: Possibly some of this has been answered. Mr. Goodwin, you seem to be worried about the awesome power of the registrar. I guess I would like to hear some more of your comments on that and then maybe some more comments from the assistant deputy minister on it as well. When you use the words "awesome power," I guess I want to hear a little bit more than what you have stated already.

Mr. Goodwin: I do not have all those things right in front of me right now. I suppose I should, but the point is that as an application comes through, it will be dealt with by certain people. I do not know at what level, but I can hardly expect Ms. Kelch to handle them all individually. Then the initials go on up the line from there. By the time it gets up to whatever the top is, it is basically the decision of that lower level.

If I can explain it just a little bit more, the Brazeau case, which was not a licensing from the beginning, but was an extension, was turned down by the board, but then went to the cabinet, which went right back to these same people whom I have a concern with. They said, "Oh, fine," and they gave them more than the guy applied for. So he shut down his terminals in northern Ontario and moved everything to Quebec and handled it that way.

I have comparatively little confidence. I know what they want to do. They want to say, "Look, put everybody on the road and we'll sort them out afterwards." I am suggesting that is too great an exposure for the public to stand.

I do believe that where fitness is concerned, it should be the board, not the registrar, because the board has the ability and the background to tell fitness and the registrar—no. It is just a simple little rubber stamp that happens someplace.

I interviewed the past deputy minister one time, privately, on what goes on, and he explained to me exactly how these things happen. They go to cabinet and then they go down, and then everybody has to put his initials on them all the way up. Some of these people are very, very nice people. We have one right here. But I suggest that they are being misled by people, and I think it is serious, really serious.

The Vice-Chairman: I understand your position, but you are making rather serious allegations and it would be helpful to the committee if you had some evidence, or at least we could have the ministry respond to the comments being made about the Brazeau case.

Ms. Kelch: There are two very distinct issues that Mr. Goodwin has put on the table. One is the process that he is describing in terms of determining the fitness of a carrier who has made application to the province, and that process, obviously, currently, only exists in place with respect to the Motor Vehicle Transport Act, because the Truck Transportation Act is not yet in place.

The other process that Mr. Goodwin is describing is the actual appeal process that a carrier has the right to according to the current Public Commercial Vehicles Act if he does not agree with the decision of the Ontario Highway Transport Board. I think the committee should be aware we are talking about two distinct processes.

1220

The latter is the process in which the Brazeau case was involved. I do not think it is appropriate for us to talk about the details of the Brazeau case, but I would like to clarify the process. I do not know what advice you were given in the past, Mr. Goodwin, in terms of how the process in the ministry works, but we do not advise cabinet. We have never advised cabinet; that is not our role. We advise the Minister of Transportation from a factual perspective. That minister goes to the legislation committee, which is a committee of cabinet, where the debate around the merits of that particular petition take place.

Obviously, before he goes in that forum, the minister needs to know the background and the process that the Ontario Highway Transport Board used in order to arrive at its decision. The ministry, and myself as the registrar and the administrative head of the transportation regulation program in the ministry, has the responsibility to ensure that the minister has all of the facts. That is the role we play. We do not advise cabinet on petitions.

Mr. Goodwin: I am very glad to have that explanation, but I should point out that essentially—and I cannot give you numbers because I cannot follow along—those recommendations to the minister would be those he would follow, and I think if he was not ready to follow them, he would come back and

ask some more questions. I know he is a pretty good question asker. He has to go on what his staff prepares, and it is no different here than it is in other bureaucracies or even in large commercial organizations; it is the same thing.

Ms. Kelch: Mr. Chairman, if I may, if we are going to have this debate—

The Vice-Chairman: Go ahead.

Ms. Kelch: —the point you make is obviously an accurate one in that the minister and I do have discussions about the facts that we describe for him, but the minister takes those facts and that description, as well as the results of the Ontario Highway Transport Board deliberation, and he goes to cabinet committee with that information. The minister does not have the responsibility of specifically recommending to cabinet directly. There is a debate process that takes place. Those individuals, just as the responsible members of this committee, have responsibilities as members of cabinet on that cabinet committee also to be apprised of the facts. That is where the debate takes place, and ultimately they recommend, as a committee, the final conclusion to cabinet.

The Vice-Chairman: I do not think it will profit us to prolong this. Obviously, in our parliamentary system, the minister is responsible for making recommendations to cabinet, he is responsible for his staff and he takes responsibility for the decisions made by his ministry. Certainly, a debate takes place in cabinet before decisions are made. I do not think it will help us. I think the position you have made is quite clear, that you consider it inadequate just to have the registrar making the recommendations; you would prefer to see the board have that responsibility.

Ms. Kelch: If I may, and I do not want to belabour this, but I think there are a couple of points of fact. One is that the petition process, as I have just described it, disappears under Bill 88. That is the proposal: that there will not be a petition. The Ontario Highway Transport Board does have the opportunity to hear appeals, but we are not going to continue to have the petition process.

Second, on the point Mr. Goodwin raised in terms of the fitness test and the responsibilities that I have as registrar actually to carry out that fitness test—and we have heard through a variety of presentations reference to the Ontario Highway Transport Board potentially being the more appropriate forum for that test—I think it is worth while to indicate to the committee that the reason the minister decided that the registrar is the appropriate location for that to take place is that it involves things that do not require a semijudicial, if I can use that term, body in order to make and arbitrate decisions on fitness.

What it includes, and we have had this discussion here around the table, is an evaluation of information; it is not a judgement exercise. I evaluate very similar sets of information in terms of making decisions about licence suspensions, for example. The registrar in Ontario has been given that authority legislatively as well. These are not judgement-related types of items.

The Vice-Chairman: But administrative.

Ms. Kelch: That is correct.

The Vice-Chairman: Thank you. We are out of time. I want to thank Mr. Goodwin for appearing before the committee. We will adjourn until two this afternoon.

The committee recessed at 12:26 p.m.

STANDING COMMITTEE ON RESOURCES DEVELOPMENT

ONTARIO HIGHWAY TRANSPORT BOARD AMENDMENT ACT
TRUCK TRANSPORTATION ACT

THURSDAY, SEPTEMBER 1, 1988

Afternoon Sitting



STANDING COMMITTEE ON RESOURCES DEVELOPMENT

CHAIRMAN: Laughren, Floyd (Nickel Belt NDP)

VICE-CHAIRMAN: Wildman, Bud (Algoma NDP)

Brown, Michael A. (Algoma-Manitoulin L)

Collins, Shirley (Wentworth East L)

Leone, Laureano (Downsview L)

Marland, Margaret (Mississauga South PC)

McGuigan, James F. (Essex-Kent L)

Miclash, Frank (Kenora L)

Miller, Gordon I. (Norfolk L)

Pouliot, Gilles (Lake Nipigon NDP)

Wiseman, Douglas J. (Lanark-Renfrew PC)

Substitutions:

Carrothers, Douglas A. (Oakville South L) for Mr. Leone

Smith, David W. (Lambton L) for Mr. Miller

Clerk: Mellor, Lynn

Staff:

Richmond, Jerry M., Research Officer, Legislative Research Service

Witnesses:

From the Ministry of Transportation:

Kelch, Margaret, Acting Deputy Minister and Assistant Deputy Minister, Safety
and Regulation

McCombe, C. J., Director, Office of Legal Services

From the Pharmaceutical and Toilet Preparations Traffic Association:

Kopytowski, Sam, Highway Committee Chairman

Agostino, Doreen A., Past President

From Coles Book Stores Ltd.:

Nelson, Frank, Director of Distribution

Individual Presentation:

Whitestone, Bruce, Chief Economist, MacDougall, MacDougall and MacTier Inc.

AFTERNOON SITTING

The committee resumed at 2:15 p.m. in room 228.

Mr. Chairman: The standing committee on resources development will come to order. We are still missing some members, but to be fair to the witnesses this afternoon, we should get started.

Before we start, there have been distributed to members a couple of pieces of information. One, done by the ministry, has to do with the costs and potential savings of empty-truck movements occurring between northern and southern Ontario. The members might want to wait to get into this in any detail until we get into clause-by-clause, because I think there is room for debate among members when we actually have a chance to read through the thing carefully.

Also, there is a less weighty document, from legislative research, dealing with the price of trucks in the United States and Canada, for members who think there are going to be entrepreneurial opportunities once the reform is completed.

This afternoon, we have the Pharmaceutical and Toilet Preparations Traffic Association. Mr. Kopytowski is here and Ms. Agostino is here. Welcome to the committee.

Mr. Kopytowski: We were supposed to be joined by a couple of other members of our association, but unfortunately, due to some business commitments, they are unable to join us today.

Mr. Chairman: Okay. Copies have been distributed to members, so please begin any time you are ready.

PHARMACEUTICAL AND TOILET PREPARATIONS TRAFFIC ASSOCIATION

Mr. Kopytowski: My position with the association is that of highway chairman, and Doreen Agostino is our immediate past-president.

The Pharmaceutical and Toilet Preparations Traffic Association, PTPTA, would like to thank the standing committee on resources development for the opportunity to present the position of its members on Bill 87, the Ontario Highway Transport Board Amendment Act, 1987. The above acts are of the highest priority in providing a transportation system in Ontario that will allow for economic growth and effective operation for the companies servicing the health care market. The PTPTA requests that Bill 87 and Bill 88 should be passed into law to provide a more competitive transportation environment in Ontario.

The Pharmaceutical and Toilet Preparations Traffic Association is a 59-member organization of major Canadian manufacturers and distributors of prescription and over-the-counter pharmaceutical products, cosmetics and toiletry products. The association was originally formed in 1958 as the Drug and Toilet Goods Traffic Conference and was federally incorporated, in May 1985, under the PTPTA. A membership list is attached as appendix I.

The criterion for membership in our organization is that a company retain membership in one of the following associations: the Pharmaceutical

Manufacturers Association of Canada, the Proprietary Association of Canada or the Canadian Cosmetic, Toiletry and Fragrance Association.

Of these 59 companies, 63 per cent of them have offices and manufacturing facilities located in Ontario. Several others maintain distribution warehouses in the province. Ontario is the major Canadian market for most of our member companies.

The combined annual sales of the Canadian pharmaceutical and cosmetics industry is approximately \$5 billion. The Ontario market generates 40 per cent or \$2 billion. Ethical pharmaceutical sales account for \$800. The Ontario government, through the Ontario drug benefit plan and through direct sales to hospitals, makes purchases of about \$400 million from our associated health care companies.

The association members sell directly to drugstores, drug wholesalers, hospitals, doctors, department stores and independent retailers. The nature of the product shipped requires a cost-efficient, effective transportation system that must be able to respond at any time to the needs of the customer. Orders may be distributed through several different modes. Shipment size could range from one carton to a full truckload or several truckloads. However, the major mode in Ontario is through its highways by truck transport. Member companies also produce products for major markets throughout the world.

Attached as appendix II is the June, 1987 presentation to the standing committee on resources development.

Bill 87 and Bill 88 are not new acts of government. The legislation has evolved from the culmination of 12 years of study, compromise, consultation and parts of previous legislation introduced involving government officials, the transportation consumer and the trucking companies. The democratic process has run its full course and nothing new has been added to the discussions by the various interest groups. The time, therefore, has come to bring this legislation to government assent. Further stalling will provide economic harm to the businesses operating in Ontario.

The original objective of transportation legislation, both in Ontario and the rest of Canada, was to provide the business community with a viable transportation service industry. This was done so that manufacturers and resource-based industries in the province and throughout Canada could develop, due to the geographic spread of the Canadian population.

This accomplishment was completed through government subsidy and by providing protection for carrier operating authorities. The above was not granted for the purpose of reducing competition and guaranteeing transportation companies profits.

The Pharmaceutical and Toilet Preparations Traffic Association, along with many other associations which have appeared before this committee, are telling the government that legislative protection of transportation service industries is unnecessary. The transportation system has evolved to the point of sophistication that the business community will thrive under a deregulated environment.

The transportation companies are well aware of the benefits of deregulation. Several Ontario-based carriers are enjoying the fruits of deregulation south of the border by expanding operating authorities. The trucking industry has had plenty of time to prepare and the legislation

provides a further phasing-in through the reverse onus test. Many carriers have further enhanced their positions through mergers, expansion of operating authorities and consolidation of divisions in total preparation for a more competitive environment.

Bill 87 and Bill 88 must be passed, as written, as expeditiously as possible. The legislation, along with Bill 86, provides a cohesive package. Changes to these bills will destroy the integrity and the intent of regulations and could maintain the noncompetitive status quo. This would be detrimental to the economic development of businesses operating in Ontario.

Deregulation will foster economic activity in the producer sector and have a positive impact on sales and stimulate job creation. The essential factor that must be considered in the use of the transportation service industry is based on derived demand. The most important factor in a need for the service has to be created by a sale of product by a manufacturing company or a raw material by a resource-based company. Without this stimulus there would not be a need for transportation companies. The most important factor must be getting the goods to the market in the most cost-effective and efficient manner, on time. The means of transportation does not enter into the equation.

The deregulation of transportation has arrived beyond the Ontario provincial boundaries. The federal government enacted deregulation effective January 1, 1988 on all transportation services under its jurisdiction.

Alberta is deregulated and Quebec has its own intraprovincial bill for deregulation of highway transport. Other provinces are also in the process of bringing into law similar bills. Instead of providing leadership and direction, Ontario has been put in the position of falling behind these jurisdictions.

This could have a serious impact on future business development in Ontario. This province should be providing the leadership and the legislation should be a model for others to follow.

In Ontario, industry is not achieving full potential because of the regulatory control that allows inefficient carriers to hide behind operating authorities which are outdated and discourage competition. This is totally contrary to the business environment of the manufacturing-based companies in Ontario. The PTPTA member companies' involvement is not only on a local provincial level. We compete from a marketplace in Ontario, throughout Canada and on a global scale.

In Ontario, not being able to deal in the open market concept for companies, gives corporations which are doing business in a deregulated transportation environment, an unfair advantage over Ontario businesses. The PTPTA members are asking that we be allowed to compete on a level playing field.

Freedom of choice in Ontario is allowed in the business community today with the exception of transportation. Freedom of choice is needed for survival. It is imperative that the trucking industry operate under the same rules that govern all businesses in Ontario and be deregulated now.

That is our presentation.

Mr. Chairman: I appreciate your attaching the June 1987 brief to the

committee to remind us that you have been here before. We have seen the movie too.

Mr. Wildman: It is pretty clear from your presentation that you want transportation in Ontario deregulated. Do you think this legislation does that?

Mr. Kopytowski: It is a lot better than we have right now. That is what we are saying. We have looked at the legislation for years. Our present system of regulation does not provide the impetus for competition. The act is a start. Bill 87 and Bill 88 are moves in the right direction and we recognize this. That is why we ask for it to be passed in its entirety without changes so that we can get on with doing business.

Mr. Wildman: You would not like it amended to take out the regulations in it?

Mr. Kopytowski: Let us get this part going first. What you are telling me is you want to spin some more wheels. I do not think we want to do that. We want to get going. We want to get those trucks moving in a competitive manner.

Mr. Wildman: We have been told repeatedly by the government that this is not deregulation.

You said that in Ontario not being able to deal on the open market with other companies that are doing business in a deregulated transportation environment puts you at an unfair advantage. Could you give us some examples of how your member companies have been put at an unfair advantage in competing with American based companies producing similar products?

Mr. Kopytowski: Truckload is an excellent example. When you take a look at the cost of moving a truckload of traffic per cent per mile in the US, it is definitely cheaper than in Canada across the Canadian marketplace. In Ontario it is the same thing. Look at the distance to travel to provide transportation service to northern Ontario on a per cent per mile basis. It is more expensive.

Mr. Wildman: Can you give me some examples of member companies that have been shut out of certain markets or become uncompetitive as a result of deregulation in the United States while we have continued regulation in Ontario?

Mr. Kopytowski: Right now I do not have that information at hand, but we could get back to the committee on that.

Mr. Wildman: I would appreciate it.

Mr. Kopytowski: That is something that when you look at the ability and the costs and the spinoffs to that with regard to investment, the carriers that are providing transportation in Ontario seem to be a lot more profitable.

Mr. Wildman: I am basically talking about your members rather than the carriers.

You indicated and we have been talking generally about the fact that you want to be on a level playing field, which is a nice American term that has come to us through free trade negotiations. I can certainly understand why you

would want to be. Do you think that the carriers should also be on a level playing field with their American friends?

Mr. Kopytowski: Right now they are, as far as I am concerned, in some instances. We have several Ontario carriers that are running around with 48 state authorities that are doing very well with that.

Mr. Wildman: They have interstate authorities but not intrastate authority.

1430

Mr. Kopytowski: My question for most of the carriers is whether they are interested in it. As far as I am concerned I have not seen that. I have not seen an Ontario carrier that will want to operate in a place like Tennessee. I have not seen that, you know, within the state. That is one thing. The Ontario Trucking Association talks to that kind of argument.

Mr. Wildman: We have heard truckers who do want to and have demonstrated their willingness, ability and desire to operate in Michigan, for instance, or New York by actually purchasing American companies that are operating in those states.

Mr. Kopytowski: I do not think that is an issue with regard to regulation from the aspect of why trucking should be regulated. Why can they not be like any other business? We have individuals today who can walk in and get a licence to operate—and not even a licence. They just go down, open a store and can operate. Why is trucking not like that? That is my question back to that argument.

Mr. Wildman: My question is why are TV stations not like that?

Mr. Kopytowski: It is not considered an essential service from the aspect that you have people out there who can do that job if it is competitive. There is no harm being done to the community. In effect, when you talk about regulating communications, I think you are talking about a whole different issue.

When we talk about trucking, we are talking about a different issue too. We have deregulated transportation services across Canada. I go with the air freight forwarders. I can share with you that our air freight costs, because of deregulation, personally at Sterling Drug, which is the company I work for, on our minimum, because of transportation deregulation, have been cut in half. That is a Canadian thing. Those costs are very important costs to deal with when you are looking at rising costs to the consumer.

Mr. Wildman: I have two questions. First, do you anticipate a decline in consumer prices if deregulation takes place for your products?

Mr. Kopytowski: I have no control over that. I am more involved in the distribution of the product and distribution costs. I can tell you this, though. Our component would make sure that they would at least maintain those costs. When you talk about transportation rising in certain respects, I think with a couple of increases a year that would—

Ms. Agostino: I would like to address that. From my perspective, we increase our prices based on our increased labour costs, our overheads and our cost of doing business in general. Although we may not say, "Okay, Canadian

consumer, deregulation here will give you a discount," it will allow us to keep our increases to a more stable rate.

Mr. Wildman: Basically you are saying it will not increase as fast as it might.

Ms. Agostino: It is all tied in.

Mr. Kopytowski: It is all part of the equation.

Mr. Wildman: I understand that. It is just that it is very hard to measure, is it not?

I would like to just point out that one of the concerns that has been largely expressed to us by the trucking companies is not so much the fact that they cannot compete interstate in the US, but rather that they cannot pick up and deliver intrastate on backhauls because of regulation in the states, rather than the federal deregulation in the United States.

Whereas under this legislation, an American competitor would be able to pick up on backhauls if he has delivered a load into Ontario from the United States. Going back, he could pick up in Toronto and deliver.

Mr. Kopytowski: Could you follow up on that?

Mr. Wildman: If he has a load, he is coming in. He unloads in Toronto, say, from Chicago. Then he has to go back. If he can avoid going back empty, he can pick up freight and deliver it almost at cost just to cover his fuel costs going back. Whereas, take a Canadian trucker who is going into Michigan with a load. If he can get a load that is coming back into Canada, he is all right, but he cannot get an intrastate load because it is regulated.

Mr. Kopytowski: My question is, would they really want to do that?

Mr. Wildman: If they can get their fuel costs covered then I am sure they would.

Mr. Kopytowski: They are saying that, but let's face it, you are running Michigan, you have a carrier that picks up and is running out of, let's say, the Pembroke area. He takes a load into the south end of Michigan. Would he really want a load to run from Battle Creek to Detroit? I think what he would want is a load, in most instances, running from Battle Creek maybe to Ottawa or Kingston, something like that.

The trucking industry has made this a big red herring. I do not believe they are really interested in operating authorities within the US states. They are looking at their own home base and they have that ability right today. As a company and as association members, we have several Canadian carriers that have the benefit of going into the US with loads and are coming back. We use them on a regular basis. I can give you several names if you want to hear them and they are doing quite well with that. It is making them very competitive and they have had this ability for several years. I do not think the issue is to run in the states because it is not cost-effective.

Mr. Wildman: If the issue is that Canadian truckers do not want to have intrastate business in the United States but rather just want to come into Canada, then why should we be giving up intraprovincial business in Ontario? The point is if we just really want cross-border traffic, let's

deregulate cross-border traffic and leave intrastate or intraprovincial traffic as it is.

Interjection.

Mr. Wildman: The gentleman is saying he does not think the truckers want intrastate, so why should American truckers want intraprovincial?

Mr. Kopytowski: They are using that as an issue. What I am saying is I find it really hard to believe in most instances. The Ontario Trucking Association has come up with several issues. As each issue has been addressed—this is the last issue I have heard from them—they keep changing their story. Why are they not continuing those issues and fighting for those issues? As we come up and argue to those issues, they withdraw them. It is as simple as that.

Mr. Wildman: I wonder why in Michigan they want to continue to regulate.

Ms. Kelch: Can I offer a point of information?

Mr. Chairman: Yes. Ms. Kelch is the assistant deputy minister.

Ms. Kelch: Just a point of clarification, Mr. Wildman, on your question, which might help our witnesses this afternoon. When you indicate that the American after dropping his or her load in Ontario can pick up and take a load back into the United States, that is not correct unless there is a Canadian driver in the truck.

Mr. Wildman: Yes, I realize that. I understand that, but it is still an American truck.

Ms. Kelch: It is an American truck.

Mr. Pouliot: We welcome your presentation and thank you for paying us the compliment of your time. In your fast-moving industry, I know how valuable time is. You seem to assume—and perhaps rightly so and we want to collectively wish you well—that under deregulation there will be substantial savings. It would not be unwise, therefore, to assume that under the present system that the motor carriers are making substantial profit. I am talking about a profit margin here. If they have what some people would call a cartel, a monopoly or if they have a regulated environment, they would do rather well in terms of profit margin. That would a right assumption?

Mr. Kopytowski: When I take a look at mergers and how carriers are growing today, buying up other carriers, I think that under a regulated environment they have that.

Mr. Pouliot: A normal reaction indeed. Therefore, one could say at the manufacturing level, since it is completely or close to being completely deregulated, competition being fierce, people would operate at a manufacturing level under a marginal profit, percentage-wise, that their profits will be a lot smaller. Because there is no competition in the marketplace, your share of profit would be a lot less. Would that not be right?

Mr. Kopytowski: I am not sure.

Mr. Pouliot: I want to share with you some statistics and they are

very relevant to the state of California. They were presented before the Public Utilities Commission. Remember what you have said. We will deal with bankruptcies first and you will see the connection as we go to column 2 and column 3. We will do this together.

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In 1978, before federal deregulation in the United States, there were 162 bankruptcies. Then it escalates. In 1987, there were 1,351 bankruptcies. Motor carrier profit margin in 1978 under regulation was 2.92 per cent. The profit margin goes back and forth. In 1982, it goes down to 0.77. You are right, you are doing very well and you have a deregulated market. In 1986, it is 2.64 per cent. Mix that with the bankruptcies and I do not have to tell you what that entails; there is a concentration of wealth here. It is called the age of acquisitiveness, takeovers and mergers.

In manufacturing during the same years, for the poor manufacturers—and I am sure if you calculate the savings here, the consumer at the other end sees little benefits—the margin remains relatively unchanged from 1978 in terms of profit margin, 5.4 and 5.1 per cent. Then it goes back and forth with the economy. Competition is not greatly affected, but what is affected is the assumptions that deregulation was to create a win-win situation and a benefit to everybody. Those are not my findings; they are the findings of people who have been through it exactly with the same force—and you are to be commended—with the same sincerity at their command, conveying to boards like these about the necessity to create yet a freer enterprise system.

At the 11th hour they have changed their minds and, consequently, as my colleague and friend has mentioned, because of the glut in the marketplace, to regulate an orderly marketplace, 43 states are still highly regulated in the United States, and bask in the free enterprise. I certainly welcome your comments and want to wish you well.

Mr. Kopytowski: Part of your comment about the bankruptcies of carriers and their ill health also happened at a time when the economy was going through a major recession. We are talking about 22 per cent interest rates in Ontario at one point. I look at what you are bringing to the table and I say to you there are some issues there that you cannot plug into the transportation equation. In a competitive environment, what we are asking is to be able to use the carrier in the business of our choice and not of a regulated choice.

Ms. Kelch: I would also like to add that I think some of those bankruptcies were based on bad decision-making processes and maybe some of those carriers cut their rates, got greedy and tried to make a profit over a long term, but they were not good decisions; so they just went down the drain.

Mr. Pouliot: With respect, the point was well taken, and for the sake of concentration brings all sorts of components. We could be here for quite some time. I make political arguments out of those, but I am very concerned about what you are saying.

Mr. Kopytowski: One of the things I wish you would look at again is the Texas situation, which was part of our brief. In my own mind, the economics and the perception of the culture there are free enterprise. They have such a stranglehold on transportation. From the article that is attached

to appendix 2 about the Texas environment, if that is what you want to see, I cannot see us operating as effectively.

This is what we are asking for. Give us a chance to operate effectively. The carriers have win-win situations, and we are professionals in our industry. The distribution people have a good understanding that carriers have to make money. If you do not have a carrier making money, then do not have anybody hauling your stuff to the marketplace. You have to get into a win-win.

What we are asking for is to take the regulatory component out of it and let us sit down on a one-on-one basis with the carrier of our choice and make those win-win situations. You talk about professionals. We have an area of expertise, and what we are asking, as distribution people in the pharmaceutical industry, is to let us use our expertise with the experts in the industry.

Mr. Pouliot: One last question. People in your position, in your shoes, want to see this not rushed through but passed as quickly as it possibly can be, and you propose in your brief no amendment. You see it as basically satisfactory. Right? It is okay.

Mr. Kopytowski: Yes, that is what we are saying.

Mr. Pouliot: I have not asked this, I have been following my learned colleagues; it is their role as critics. I do not even belong to this committee. I am here as a sub, so they are way ahead of me. But I will ask the question because I have not asked it before.

Assuming that I am a trucker at the present time, of medium size—I could be small or big, but let's say of medium size—your average trucker, and I operate 50 trucks. I am the holder of so many licences, and I was working under—I have to—the regulations of the government. I cultivated my business, and I am still under this kind of suggested cartel and monopoly. I have my licence. I want to go to 55 trucks in order to be able to compete, but I am pretty well from hand to mouth and my cash flow is not too big. So I use my goodwill, my licences—you know, taxi drivers can go; that is highly regulated; you need to travel back and forth to the airport to notice that—as collateral to negotiate a loan with the bank.

Since my cash flow is somewhat limited and I have quite a depreciation on my equipment, it could become \$2 million or \$3 million worth on the marketplace, quite valuable. I followed all the rules.

I have no compensation under the proposed bill. My goodwill, the only thing I can really sell that is tangible, is the right to operate, maybe a monopoly, but the right to operate.

What do I do with that asset? Should I not be compensated because I followed the rules of the government? Should that not be a component or a natural part of the bill as we make the transition between what is now in existence and what will be in existence after royal assent when the bill becomes law?

Mr. Kopytowski: Also, you are talking about a situation where you have a company that has probably been in business for a while and you have an understanding of what has been happening in the marketplace as a prudent businessman. You have developed a company. You have something else going for you that is probably worth more than your licence, your name as a company and

the service that you provide. That is probably one of the biggest assets you have.

You are asking for compensation. That is an issue I do not know how to deal with, because when I look at a company, I definitely look at the licensing, but what I look at is the ability to provide a service at a cost, and that is how I deal with a company. That is the most important asset a corporation has, whether it is a transport corporation or any other corporation.

Licences are something else, because operating authorities—nobody said that is a right you should have.

Mr. Pouliot: I want to thank you for your kind comment. I deal with professionals here when it is time to turn around the issue. I say this with all due respect.

The reason I asked is simple. They did this in the United States and it was not seen as government interference or intervention, but it was seen as a government responsibility. It stopped a lot of people from screaming and it helped the transition.

Mr. Kopytowski: There is a transition there, and the legislation does allow for the reverse onus test. That reverse onus test is a five-year phasing in. In that time, individual companies can probably deal with it that way.

Mr. Carrothers: I wanted to talk about the kind of trucking service your members get out of the current regime. Do many of your members operate their own fleets of trucks?

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Mr. Kopytowski: As a company, I can say we do. We have our own fleet. We have three tractors and six trailers that we operate. I know for a fact some of the other members do also. It is not a widely used method of transportation, but there are—

Ms. Agostino: A few.

Mr. Kopytowski: Yes. If you said five per cent, 10 per cent or 20 per cent—I could not give you a number.

Mr. Carrothers: But some of your members do; your company does.

Mr. Kopytowski: Yes, we do.

Mr. Carrothers: Why did you start operating trucks?

Mr. Kopytowski: We have done that basically from the aspect of cost and efficiency and providing service to our customers.

Mr. Carrothers: In other words, you were not getting the kind of service you felt you needed from the existing commercial carriers and you felt you had to operate your own.

Mr. Kopytowski: Yes. Remember that our company is based in Aurora, and when we moved to Aurora 30 years ago, there were probably two trucking

companies there that I know of that could provide service. We were not being provided with that opportunity. Over the years, we have looked at it and we have evolved into a fairly efficient private truck fleet.

Mr. Carrothers: Do you think you might change?

Mr. Kopytowski: It is a possibility. That is something we are constantly evaluating. With our private truck fleet, we have contracts because it is a leased private truck fleet. When the contracts do expire, one of the studies we do is on efficiency; we always turn it out for competitive bids. So far, the for-hire market has not been able to compete.

Mr. Carrothers: Do you have any inclination or thought as to what might happen? Do you think you might find the service you need and therefore stop running those trailers?

Mr. Kopytowski: It is possible. We just recently did the evaluation and it was fairly close. On the expenditure of \$350,000, the difference was probably about \$25,000, but it was still a considerable saving to the corporation for a private operation.

Mr. Carrothers: Thank you.

Mr. Chairman: Mr. Kopytowski and Ms. Agostino, thank you very much for coming to the committee.

Ms. Agostino: Thank you.

Mr. Chairman: Our next presentation is from Frank Nelson from Coles Bookstores Ltd. Welcome to the committee. A copy of Mr. Nelson's brief has been distributed; it looks like this with "Coles" on it. Do you remember Coles Notes?

Mr. Miclash: I used them a lot.

Mr. Wildman: You never used Coles Notes.

Mr. Chairman: They certainly got me through school. Mr. Nelson, you can proceed.

COLES BOOKSTORES LTD.

Mr. Nelson: Coles Bookstores would like to thank the standing committee on resources development for the opportunity to provide our views on the proposed changes to Ontario's trucking legislation. In 1934, during the Great Depression, Carl Cole opened a bookstore in Toronto, Ontario. It was not until six years later that a second store was opened and not until 16 years later that a third was opened. From 1956 to 1971, amid tremendous competition, Coles grew from three to 58 stores reaching from Ottawa to Vancouver.

With the ever-increasing rate of expansion, the burden of financing new stores became excessive. The cost of fixtures, inventory and other building costs were escalating at a faster rate than earnings. A new approach was needed; so in 1973 Coles became a public company to raise additional capital. In 1975, to ensure continuous flow of capital for expansion, Coles Bookstores Ltd. became a wholly owned subsidiary of Southam Inc. In 1980, another dream was realized. Known as the world's biggest bookstore, more than 75,000 square

feet of space in downtown Toronto carries the largest selection of books available under one roof.

Today Coles Bookstores Ltd. operates 198 retail outlets in Canada. The locations span from Newfoundland to British Columbia, and 85 stores, or approximately 43 per cent of the entire chain, are situated in Ontario. Books, stationery, art supplies and the infamous Coles Notes are the primary product lines.

The company's revenue this year will exceed \$140 million and approximately \$79 million will be generated in Ontario. The company ships about 16 million pounds of less-than-truckload merchandise to its stores from the head office in Rexdale. Eight to nine million pounds are delivered to stores in Ontario.

The company employs about 600 people in this province and estimates that Coles injects \$25 million into Ontario's economy. The economy is stimulated by companies like ours and the trucking industry should conform to the needs of the shipping community, not vice versa.

Coles Book Stores Ltd. has endured and enjoyed phenomenal growth during the past 17 years, and it should be emphasized that this was accomplished amid an environment of strong competition with two other book retail chains as well as thousands of independent bookstores across Canada. Coles did not have the luxury of regulatory protection from competition that the trucking companies have enjoyed for more than five decades.

As director of distribution for Coles Book Stores Ltd., my department has an operating budget exceeding \$3 million and is responsible for ensuring that about 11,000 store deliveries are made each year. The company does not have its own vehicles and employs the use of several common carriers and a contract carrier. The need to deliver our merchandise to the marketplace cost-effectively is obvious and we are constantly seeking alternatives to current methods and practices to this end.

Ontario's strongly regulated trucking industry cannot provide us the flexibility and affordability we need and, unfortunately, innovation is hampered by the current regulatory framework. For instance, under regulation, our company during the past several years has paid rates to Sault Ste. Marie that are 57 per cent higher than rates to Vancouver, rates to North Bay that are 42 per cent higher than those paid to Calgary and rates to Owen Sound that are 29 per cent higher than rates to Winnipeg. These are but a few of the disparities that now exist. The rates are based on LTL shipments of between 500 and 1,000 pounds, which represent over 90 per cent of our store shipments.

It is situations like this that impede the economic development of our northern Ontario communities. A survey conducted by the goods distribution systems office of the Ministry of Transportation, published April 13, 1987, indicated that 36 per cent of southbound and 24 per cent of northbound trucks on Highway 400 were empty and concluded that "there is an opportunity to reduce transportation costs by as much as 7.5 per cent for movements between southern Ontario and northern Ontario." The study also concludes that several million truck miles could be eliminated, thereby reducing congestion and the potential for accidents and lowering highway maintenance costs.

This potential for savings can be realized by allowing greater competition to the northern Ontario traffic lanes by allowing ease of entry

and by optimizing usage of the existing equipment now operating on Ontario highways.

Private carriers or shippers own and operate more than 50 per cent of the trucks on our highways in Ontario. Our company will be interested in negotiating contracts for carriage with appropriate private fleet operations that will be compatible for goods movement and matching of loads. Agreements of this nature would streamline the existing trucking network as well as reduce shipping costs for both parties. It is likely that this arrangement would call for a single deconsolidation dropoff to a northern Ontario trucking company for local delivery.

Innovative approaches like this, unabated by regulatory constraints, would improve the overall efficiency of the existing trucking network, reduce congestion on the highways, lower operating costs for the private carrier, reduce shipping costs for the second-party shippers and preserve the existence of carriers domiciled in northern Ontario communities.

Greater competition through open entry to the trucking business will enable those entrepreneurs who have the expertise, financial stability, insurance and safety requirements—i.e., fitness—and desire, to enter into the market for profit.

Highway safety in Ontario for trucking operations now under regulatory control is inadequately monitored and enforced. The best intentions in statutes and regulations will not suffice if insufficient staff is left to conduct comprehensive road and weigh-scale inspections.

There are those who argue that a National Safety Code must be in place prior to the enactment of Bill 87 and Bill 88. Canada now has this safety code in place. It is in the process of being implemented and enforced. My view is that safety, notwithstanding any existing regulatory framework or total lack thereof, should always be at the forefront of co-operation and improvement by all key players in the transportation industry.

The enactment of Bill 88 will not open the floodgates for new trucking companies, but it will allow those now operating to compete more freely. There will not be a sudden increase in trucks on the road, but a greater utilization of the existing infrastructure. Safety will not be at the expense of Bill 88.

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Our desire is for open entry into the market, with increased vehicle inspection and safety enforcement. Trucking companies should not be prohibited from increasing economic activity on the basis of what may occur, but on the merits of their established safety records. The introduction of the commercial vehicle operator's registration certificate and the implementation of the National Safety Code will ensure improved safety standards.

In most cases, public interest tests for entry into the trucking business in Ontario have become a formality, leaving us with a rubber-stamp image in terms of operating licences. It is only a few who oppose open entry with a required fitness test to protect themselves from increased competition and to maintain a perceived intrinsic value in the licensing authorities they hold.

The fact that the statutory framework has not kept pace with the changing needs for consumers of highway transportation services can be

exemplified by the increasing number of trucking companies now operating in areas without proper licence authority or creating situations to move freight that circumvent the Public Commercial Vehicles Act. Let's stop this now and eliminate the confusion that licence regulation has created by allowing ease of entry with a fitness test that requires stringent insurance requirements and a greater focus on safety.

Although concerns regarding reciprocity are not in themselves of direct consequence to shippers, Coles Book Stores feels that if Ontario-based carriers are not given comparable market entry consideration in the states domiciled by US carrier applicants for intraOntario operating authority, then provisions should be specifically made in the regulatory framework that will emanate from the proposed statutes. This issue should not, however, be the cause for delay in the passage of these important pieces of legislation.

Coles Book Stores Ltd. believes that the enactment of Bill 87, the Ontario Highway Transport Board Amendment Act, and Bill 88, the Truck Transportation Act, will facilitate a more efficient and competitive trucking network in Ontario. I urge you to seriously consider the significance and impact of this long overdue change and I reiterate our company's support for the prompt passage of these bills.

Mr. Wildman: Thank you for your presentation. The difference in tone between your presentation and that of many of the other speakers who have been here before is very interesting.

On the page after the one headed "The Issues," you point to the costs to North Bay and Sault Ste. Marie as compared to western centres. It has been suggested by some of the carrier representatives who have appeared before us, such as Mr. Reimer, who trucks substantially through northern Ontario, from Winnipeg into the southern Ontario market and back, that in fact deregulation would have the opposite effect of actually increasing these high rates to smaller centres in the north rather than lowering them, because less-than-truckload loads into small northern centres would be less frequent and less profitable, not so much, I suppose, Sault Ste. Marie and so on, but smaller centres in the north.

I am wondering why you would think rates to the north would actually be lowered. Is it related to what you said earlier about the number of empty backhauls?

Mr. Nelson: It relates to using the existing infrastructure more effectively, by allowing companies like mine to sit down with other shippers with private fleets to negotiate a package where we could move the goods together.

Mr. Wildman: I am interested in what you are saying here about the empty backhauls. These statistics have been given to us before. Surely, though, a lot of those trucks travelling on Highway 400 between northern and southern Ontario are pulp and paper trucks, lumber trucks—

Mr. Nelson: Retailers.

Mr. Wildman: —steel from Algoma Steel, and while there are other types of trucks travelling that highway as well, there is a good portion of full-load, resource-based industry transporters included in those statistics, and I am wondering how you would adapt a lumber truck to carry books.

Interjection: Put it in the cab.

Mr. Nelson: You would not, but I noted in there that there would be comparable goods for matching up loads. Certainly, we would not proceed without doing that.

I would like to comment on the northern Ontario argument in itself. My opinion is that in the three years I have represented Coles in all the rate negotiations, I have had two carriers come in and tell me what the rates are: "Here are my rates. If you are interested, call us." We choose the lower of the two companies and have moved since then, and that is the only area in all of Canada where I have negotiated rates where I have had that situation, because those two companies not only control a lot of the market, they have bought up little companies up there. I do not want to get into specifics, but I think if you look into the research side of it, you will find that those carriers have also swallowed up some local trucking entities themselves.

Mr. Wildman: I understand what you are saying, but the point I am trying to make is that the carriers have said that this situation would be exacerbated, not improved.

Mr. Nelson: I do not know what facts they have to substantiate that.

Mr. Wildman: They give evidence from the United States experience since 1980 of concentration in the industry. Initially there was an influx of carriers after deregulation, but since then, in the LTL business, it has gone down from somewhere in the neighbourhood of 150 firms to eight.

Mr. Nelson: Each truck in the trucking business is unique in the sense that each truck is its own economic unit, and I do not know how one can explain the rationale of costs that are substantially lower to Vancouver, and they have operating costs, and yet in the same instance up to northern Ontario you are paying 42 per cent higher.

Mr. Wildman: I agree with you, but I am just wondering if it is going to get better or worse.

Mr. Nelson: It is going to get better because it will allow us the opportunity to sit down with private carriers, other shippers, and perhaps move our freight with them where they are going empty. I know of two or three companies right now where I think it would be a favourable arrangement.

Mr. Wildman: I am interested in your comments, just in closing, on reciprocity, since that has been a matter raised a number of times before the committee. I am interested in your comment that "we feel that if Ontario-based carriers are not given comparable market entry consideration in states domiciled by US carrier applicants for intraOntario operating authority, then provisions should be specifically made in the regulatory framework that will emanate from the proposed statutes."

I think that is a very good point, but I am wondering why you feel it should be done only by regulation rather than by the amendment that has been suggested, which would actually amend the act to do exactly what you are suggesting?

Mr. Nelson: I think certainly my concern for my company—and I think there are other shippers who share that concern—is that if we start taking some blocks out of it, the whole thing may come tumbling down, and our concern

is to lower our costs and to be more innovative. I certainly would not want to see these bills jeopardized for the fact of the reciprocity issue. I think the statute does cover certain areas and protections for them, and I think you have already been addressed on where they are with the Canadian Industrial Transportation League. Certainly if they are looking for specifics, then put them in the regulations, but let's preserve the integrity of the bills and not let them go to their demise because of the one issue.

Mr. Wildman: I certainly appreciate your comments in that regard. I will just say that I would rather do things in an open forum with debate and passage by elected members than have bureaucrats and lawyers behind the scenes make regulations.

Mr. Smith: Mr. Nelson, to go back to what you were talking about somewhat with Mr. Wildman, I really wondered if your comparisons are fair when you compare Sault Ste. Marie to Vancouver, North Bay to Calgary and Owen Sound to Winnipeg. It would seem to me that your compared cities, especially Vancouver, would be a huge marketplace, so a tremendous volume of business, I would think, compared to Sault Ste. Marie.

I guess I am questioning whether those are really fair comparisons to make. The north just does not have the volume of business that Vancouver or Winnipeg would have, and I imagine Calgary is the same. So really I almost asking myself, "Are they really relevant?" to this discussion here.

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Mr. Nelson: I think they are quite relevant. The fact that we want to stimulate economic development in the north would certainly mean, "Let's see if we can get our goods to market more competitively." I can tell you that our company really takes a second look in northern Ontario locations for this among other costing factors involved. If we were to show you the demographics of our store locations, we have 10 stores in Calgary, we have 12 stores in Edmonton, we have one in Timmins, we have one in New Liskeard. Certainly I think this is one of the contributing factors that has stagnated our growth as a chain in northern Ontario, because the bottom line is that it is costing us a lot more to get our goods to market than in western Canada.

Mr. Smith: Okay, then. Could I ask you, do you have any stores 300 miles north of Edmonton? This is what we are talking about; we are talking about coming from—

Mr. Wildman: Why not compare Sault Ste. Marie to Prince Rupert?

Mr. Smith: Well, I was not going to go that far, but I do not care how you compare it. I just think it is distorting some of your facts. You have got a good presentation there, but that, to me, is distorting, I do not know, part of the discussion.

Mr. Nelson: If we were to compare Timmins to Terrace, British Columbia, which is the farthest store in the chain, they are about the same rates, so that should be dramatic enough. Timmins has the same rates as Terrace, BC, which is well up the west coast.

Mr. Smith: It is up on the coast, is it?

Mr. Nelson: Way up.

Mr. Smith: Okay, that is all I wanted to ask. I just wanted to—

Mr. Nelson: I could have been more one-sided, I think.

Mr. Chairman: Thank you, Mr. Smith. Mr. McGuigan.

Mr. McGuigan: Just one point in your presentation. At the very last line under "Public Interest Test you speak of "stringent insurance requirements." You are saying that you do not think we should have stringent insurance requirements.

Beyond the actual safety checks saying that the tires are proper and the brakes are proper, there is also the question of the integrity and the honesty of the people who are making up reports, keeping logs on drivers and that sort of thing. If those people are dishonest, it most likely shows up in their insurance experience. It is is not going to show up on their tires if you look at their tires, but it is going to have to show up in their safety record. It seems to me that stringent insurance requirements, assuming they are applied fairly, they are applied for reasons, are going to do quite a bit for safety. I wonder if you really gave that as much thought, perhaps, as you should have.

Mr. Nelson: Do you mean that a tightening of insurance requirements would avoid undesirable people entering the market?

Mr. McGuigan: Yes.

Mr. Nelson: I want to make a point on safety. I do not think a lot of it is deliberate on the roads. I think a lot of it is just a lack of keeping both private carriers or shippers and common carriers honest with these enforcements and weigh-scale inspections. I know of a private carrier for whom I worked for a number of years who had several vehicles pulled off for some major defects that they just had not caught. I am not suggesting that these are deliberate attempts by these companies. It is just that if somebody is not there checking them, then they have a tendency to miss things or to lag behind.

Mr. McGuigan: You are focusing in on the physical. If you look at a tire, whether it has got a tread on it or not, you can see that. When you inspect brakes, you are looking at the physical.

Beyond that there is a question of whether that driver went for three days without sleep or did not. You cannot really plug a test into him and see whether he worked that many hours or whatever. It depends upon people's integrity, and the test there really is his accident rate. If the accident rate is bad, it seems to me that stringent insurance requirements would keep that person out of there. It would be a check on the ultimate safety of the operation, just as much as testing the tires and the brakes and the physical things.

Mr. Nelson: It would be naïve to say that if the insurance requirements are stringent, then we are all going to have safe vehicles. I think it would be dangerous to place the onus on that in itself. I certainly would not want to do that.

Mr. McGuigan: I guess I cannot agree that we have arrived at that point.

Mr. Carrothers: I wonder whether we could return to the northern

transportation issue because, like Mr. Wildman, I am rather interested in the differing points of view we seem to have received on what might happen in the north.

Do I take it from the tenor of your presentation that you see one of the major, important reasons why there will be the stranglehold of the marketplace you described—the two companies which could dictate rates—and that costs may be higher up in the north, has to do with barriers to entry into the business: namely, that it is hard to get an operating licence for the north, you have to spend a lot of time and money receiving that permission, you are not going to get in it and you leave that transportation to the other companies? Is it the difficulty getting into the market which you think is mainly responsible?

Mr. Nelson: I think that is partly the reason for it. Also, a lot of logistical ways to improve movement of goods for both parties to get to the marketplace more cheaply are developed in a competitive environment where people who perhaps may not have entered in a regulatory environment are now getting into the business, coming up with ways for all people, carriers, shippers and the consumers, hopefully, with the product going to their market more cheaply.

Mr. Carrothers: New players may get into the field. This morning we heard the new concept of freight consolidator, companies which grew up in the US where, after deregulation, they would pool together small shipments into truckload shipments and then bring a full-load carrier up and ship it from one point to another. Is that the type of thing you are speaking about?

Mr. Nelson: They are in existence in Canada today.

Mr. Carrothers: That might improve, we might see more of that type of thing happening, so that if we opened it up, so to speak, and dropped the barriers to entry, that is what is going to be what causes the drop in shipping costs in the north.

Mr. Chairman: Are there any other questions from members for Mr. Nelson? Mr. Nelson, thank you very much for bringing your views to the committee.

I am almost afraid to suggest that we take a break because I will never see the members again for the rest of the day, but I think it is appropriate that we take a break as we have a hiatus between now and our last presenter for the afternoon. Bruce Whitestone is scheduled to appear around four o'clock. If he is here early, we will start early. Perhaps we can meet back here at 3:45 in anticipation of his being here then.

We are adjourned until then. I hope to see some of you.

The committee recessed at 3:18 p.m.

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Mr. Chairman: The resources committee will come back to order. I understand Mr. Whitestone is here. Mr. Whitestone, we appreciate the fact that you are here now. If you would take a seat. There is one copy of Mr. Whitestone's brief. We will make sure that copies will be made available to the committee, but right now, it is not. It is too thick to run out and simply run off a Xerox.

Mr. Whitestone, welcome to the committee.

BRUCE WHITESTONE

Mr. Whitestone: Thank you very much. I appreciate that you are seeing me, particularly on an afternoon when you would probably all rather be home or doing something.

Let me tell you why I am here. I was a Liberal candidate two years ago in Wellington. The Liberal lost and a lot of people there have asked me to continue to help them a bit. One of the individuals there is in the trucking business and he asked me if I would appear and explain my views on the trucking industry.

I must say that for me to comment in a very short period of time on a bill as complicated as that is more presumptuous than I am. I am an economist by profession. Economists are the subject of much mirth, some of it justified and some not: I see this gentleman here shaking his head. I think the reason they are is because they are asked to do too much. If an economist were to venture a guess about where the stock market or the level of the Canadian dollar will be in a week, he would be very foolish, but I think an economist can serve a useful function if you ask him or her to do the right thing. An economist is very much like a medical doctor or a lawyer. An economist operates by precedent. An economist can tell you that if you, as England did many years ago, put a tax on chimneys, people will knock down chimneys. If you put a tax on windows, people will board up their windows. An economist can serve a function.

All I have in my brief, which is really quite long, is what happened with deregulation in the United States. I am not in the trucking industry. I am an economist, so I have no axe to grind, but I think it is very well worth reading what I have included, which I went to some trouble to get: something prepared by the economic analysis branch of the federal government in Canada, called Trucking Deregulation in the United States; and then a book, Effects of Deregulation on Motor Carriers, by a man who is known as Nicholas Glaskowsky. It is published by the Eno Foundation for Transportation. I made a point of trying to find out what the Eno Foundation for Transportation is. It is really an organization, established about 50 years ago, that was interested in the transportation industry. Maybe you know about it. Those two things are worth considering.

I have some brief comments on my own and that is it. Governments should really basically try to do no harm. It is very difficult for governments. I have been in and out of government for most of my life; I was in the federal government at one point and worked for the former leader of the Liberal Party here. It is very hard for governments not to do harm. I think, again, it is really because they forget precedent.

I do not know much about the law of physics, but one thing I know is every action has an equal and opposite reaction. The history of government doing one thing and then reversing itself and going back again goes on and on. In Britain in the 19th century, capitalism ran amok and you had child labour and all kinds of excesses. Then I think, rather objectively, you had a reaction and labour unions became too powerful, at least from most people's point of view. Then you have Mrs. Thatcher and she is going the other way again. You may think that is right or may not.

Regulation began in the United States for very legitimate reasons. It

began towards the end of the 19th century when you really had pirates of capitalism who decided that they would take advantage of it and took the system for all it was worth. People like John D. Rockefeller would work out deals with the railroads where they would get very low rates and the other people, the small oil companies, were left holding the bag. There was all kinds of collusion and things like that.

Now you have, apparently, a piece of legislation that, I guess, is 60 years old. Again, I would not dream of commenting on all the legislation and what you are doing, but I think one should look at deregulation with a great deal of caution. I think the main people it will probably hurt, from what I can gather, and I am far from an expert—I looked at Bill 88, and to me it is very hard to understand, frankly, unless you know all the preceeding legislation, which I have not looked at. You are going to have the large shippers getting an advantage and the small shippers being in trouble. What you also have, and it is outlined in some length in this great big thing of which eventually I guess you are going to get a copy, is that safety is always ignored. You have noticed it in the US airline industry. If a thing works, why change it?

The final comment here, in part 3 of my great big volume here, is something from the Globe and Mail, which you maybe saw, on about August 11, on how the US is going to be allowed to take advantage of deregulation in Canada. They are going to be able to do things which are going to hurt Canadian entrepreneurs. As I said, it is in part 3 of this. When basically the Ontario government, or people in Ontario anyway, to be more specific, are opposed to free trade, why we are letting our neighbours to the south get an undue advantage, I do not know. There is much more opportunity for them to ship up here than there is for us to ship down there, so we are going to be left with a great deal of trouble. That is really all I have to say. I do not want to repeat myself too much. It becomes a bore.

But I think three things—the fact that it helps the large company and hurts the small one, that safety is ignored and that it could put us in an unfair position relative to the US—alarm me. All I do is commend to your reading what happened in the United States, because all the economists can do is tell you what has happened every time you have done something in the past. Why are we doing something which we learned long ago? It brings its own collection of troubles.

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Mr. Chairman: Thank you, Mr. Whitestone. Since you have started the comments about economists, I thought I would add to them. I am sure you have heard those two expressions that I like best. One is that if all the economists in the world were laid end to end, they still would not reach a conclusion. The other is that if all the economists in the world were laid end to end, it would be a very good thing.

With that comment, I will pass on the comments to Mr. Pouliot.

Mr. Pouliot: I do not have quite anything to match those words of wisdom.

Thank you for paying us a visit. You seem to indicate you find it somewhat difficult—and I am talking as one politician to another. You are right, it is getting quite late, so we can afford to be a little loose and candid and I want to share a few moments with you.

As a politician, or as a human being who is involved in politics, do you find it difficult—I say this regardless of political affiliation; it is too late in the afternoon for that—

Mr. Smith: What is your party affiliation?

Interjections.

Mr. Whitestone: I am trying to be a politician.

Mr. Pouliot: —that a government would be opposed to free trade and yet, by philosophy—although with some parties, when you talk about parties and philosophy, you cannot say that in the same sentence, depending on the party; it does not have a philosophy. But the party says, "I'm opposed to free trade, but I'm for deregulation of trucking." Is that not a little bit contradictory?

Mr. Whitestone: Let's go back a bit. I am not a politician, I am trying to be a politician.

In all candour, I think you can oppose free trade and yet deregulation is really not in conflict with the idea of opposing free trade. Deregulation is much more letting the free market work. I do not think there is any inherent contradiction between free trade and letting the trucking industry be deregulated.

The only thing I did say, at the end, in part 3, I quoted from the Globe and Mail, which showed that probably deregulation gives an unfair advantage to the Yankees.

Mr. Pouliot: From some of the comments you have made that if something ain't broke, then there is really no need to fix it, I would assume that things are running fairly well. The economy is very, very good. Transportation is an important component of that economy.

You have examined the findings of that experience in the United States. We have heard several presenters telling us that their costs will be going down and that the consumer will benefit immensely or to a large degree with deregulation. Do you see a lot of things changing with deregulation, or do you see the consumer benefiting all that much?

Mr. Whitestone: No. As I said, I truly have no axe to grind. I told you the reason I am here is that a constituent—to-be asked me to be here. So I can be as honest and objective as it is humanly possible for me to be.

No, I think not. Look again at what happened to deregulation in the airline industry in the United States. I repeat, an economist—and I will give you another joke later on—like a doctor, can say that every time something has happened, X has followed. You have deregulation in the airline industry in the United States. I would think even though, fortunately, there have not been that many mishaps—it is completely fortunate and it has nothing to do with anything—safety has been ignored, that we do know.

Sure, rates have been lowered in the United States. You can fly from New York to Los Angeles for \$299. However, if you want to go from Cleveland to Chicago, it will cost you \$842 and there is one plane that goes every other Wednesday.

I think the same thing would occur here. I think you would have heavily travelled routes where there would be a lot of competition and you would probably have lower rates. But if I, who commute every day from outside of Kitchener to Toronto, wanted to ship something from Kitchener to Toronto, it would probably cost me an arm and a leg.

When we first moved to Ontario, trucking companies would take less than a truckload. Now they do nothing of the kind. Can you imagine with deregulation what they would do?

I do not think truckers are any worse than any other person, or any better. I think they would take advantage of what they could. I think they would lower rates for you and me, the consumers, only if it were in their interests to do it or if there were a lot of competition; in the heavily travelled routes, yes, and in the other routes, no. From northern Ontario to Toronto it would probably cost you an absolute arm and a leg, but between Toronto and Windsor it would probably be much less expensive.

Mr. Pouliot: I noticed that with the airlines deregulation is costing us more with fewer routes.

Mr. Whitestone: Sure.

Mr. Smith: Since you have more or less been going back in history—I think you must be somewhat of a historian—where do you see the United States ending up—I will just use a year here—by the year 1995 or the year 2000? They started to deregulate in 1980. Where do you project the trucking industry, and I know this is a hypothetical thing, but you have studied history, to be at that time, seven to 12 years down the road?

Mr. Whitestone: You are opening a Pandora's box for me to go on and on, which I will not. I think a lot of things that are going to change radically, without going into a whole long diatribe on my views on the economy. You cannot continue to have an economy function where you have debt growing twice as fast as gross national product.

Looking at it from your point of view, if we have debt going like that and GNP like that, without something changing you are either going to have a very severe recession when debt is brought down or you are going to have huge inflation. I myself would assume, again based on how governments operate, that they are going to opt for inflation, but I do not know.

Many years ago, a movie producer, Sam Goldwyn, said he never made predictions, particularly about the future. I do not have the kind of insight to make that prediction.

Mr. McGuigan: Mark Twain first said it.

Mr. Whitestone: Did he? All right. Goldwyn quoted it. Fair enough. I guess there is nothing new under the sun.

I do not know. I myself think the economy is going to have a great deal of trouble in the next four years.

Mr. Smith: So by 1995 the trucking industry could be drastically changed, as far as you are concerned, just because of other marketplace factors or huge worldwide factors?

Mr. Whitestone: Yes, I would think the trucking industry is going to be beset by a couple of things, either hyperinflation, which really means that maintenance and costs will be a tremendous burden for the truckers, or you are going to have a lot of small truckers thrown out of business because of tremendous deflation and recession. I think the trucking industry is going to change radically, and to base a lot of legislation on where we are on September 1, 1988 is a leap of faith I would not undertake.

Mr. Smith: You referred back to the late 1800s. I just finished reading a book which I would recommend if you want to see how some of the legal firms operated in the late 1800s with the capitalists. The book is called *A Law Unto Itself*. You cannot believe how they operate. Maybe they would give you a little insight as to where we are going to go too.

Mr. Whitestone: By whom is the book?

Mr. Smith: I think it is Nancy Lisgar and Frank Lupsius. He used to write for the *Economist*. Maybe he still does, I do not know. It was a pretty interesting book, and it must be right because nobody has sued yet anyway. Sullivan and Cromwell is a legal firm, one of the most well known in the world, I guess.

Mr. Whitestone: When you look at a book by Stewart Hall Holbrook on the pirates or barons of capitalism and how they operated, which is why I made the comment about John D. Rockefeller, towards the last third of the 19th century, that is what they were doing. He made sure he got preferential treatment and the small oil company was really forced to the wall. If you had deregulation, I dare say the same darned thing could very well reoccur.

Mr. Chairman: The next question is from one of the most charming pirates of capitalism, Mrs. Marland.

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Mrs. Marland: Is that comment on Hansard? If it is, I would feel the necessity to respond, but I will try to restrain myself.

It is interesting to hear some of your generalization, particularly when you talk about the safety of the US airlines as an example. You were discussing the fare structure. Because you introduced that as part of your argument, and it happens to be part of your argument I cannot agree with, I am wondering if you could elaborate a little further on that area.

Mr. Whitestone: You cannot agree that the fare structure would do what?

Mrs. Marland: I cannot agree with your argument as it pertains to safety with the operation of the US airlines.

Mr. Whitestone: You cannot agree? All I was saying—again, if I may, you can read it in here—is that what has happened is that safety has been ignored. From the US experience, and that is all I am going by, the one thing you can be positive about, according to these people, is that safety is going to take a back seat. That is the very one lesson. The other one he mentions is that probably the fare structure is going to hurt the smaller shipper. But the one thing which cannot be gainsaid is that safety is going to take a back seat. Maybe Canadians are so much more altruistic that it will not happen here, but from the US experience, that is the one thing which is going to take a back seat.

Mrs. Marland: Now you are saying the US experience in the trucking industry.

Mr. Whitestone: Yes.

Mrs. Marland: It was your reference to the airline industry that I did not think held credibility through your argument; that is all. I thought you might know something I did not know.

Mr. Whitestone: No. I was using such informed sources as newspapers like the New York Times and television news, things like that. Generally, for example, Eastern Airlines has been cited as not adhering to safety regulations.

If I may go on a tiny bit, actually I heard on the news last night that with deregulation they have hired pilots who are much less qualified than they had been. This was on the CBS news last night at 6:30 in connection with the Delta Air Lines crash. They are hiring pilots with much less qualifications than they did hitherto, because of deregulation.

Mrs. Marland: But the federal transport board or whatever the US government—

Mr. Whitestone: It is the Civil Aeronautics Board.

Mrs. Marland: Thank you. Their governance of airline transport ratings on pilots' licences is the same as the federal government's in Canada. The requirement is that you have an ATR if you are flying commercially. The internal policies of the airline are related individually to whatever that airline is trying to do in terms of service. If an airline is dropping its safety policy, it will be reflected in its record and therefore it will ultimately be reflected in its passenger loading, because people will not fly with an airline that is dropping them out of the skies.

Mr. Whitestone: I really do not want to linger on airlines.

Mrs. Marland: It was just that you said that, and I thought maybe there is an argument there because you are relating it to this issue. The one area in this legislation where I feel personally there is more security is in that one area of safety.

Mr. Whitestone: As I said, it might be, but I will just quote one paragraph from part 2 of my brief, which I guess you will eventually get a copy of. Again, this is in the US:

"Despite the proposal for national driver licensing, which seems likely to be enacted by Congress, safety will continue to be a problem because of the combination of fleet ageing, deferred maintenance and many less skilled truck drivers on the highway. Only intelligent, concerted and co-operative action by both industry and government can reduce the rising accident rate to or below its pre-deregulation level in so far as accidents caused by poor driving per se are concerned. That is not likely to happen before 1990, despite the author's hope that he is wrong in his prediction."

Mr. Wildman: What is that source?

Mr. Whitestone: You will find it—all these things are so cleverly marked here—in part 2, Effects of Deregulation on Motor Carriers, that one by Nicholas Glaskowsky, page 71. You will remember my opening comments were that

all we can do is operate by experience.

Mr. McGuigan: Since we are having a little bit of levity, I just want to share with the committee my story about economists. I was in an audience where Eugene Whelan, who was the Minister of Agriculture, was addressing a group. He always had a great deal of fun with Beryl Plumptre who was head of the prices review board at the time and also an economist.

Eugene would look over his glasses; he read with half-glasses. He hardly looked at his script. He was always telling stories and going on with his own experiences. He finished his whole string of stories about economists, ridiculing economists. He looks down and he starts reading again, "And my department just hired four new economists." He had not read the speech. That brought more laughter than his original stories. I am a great admirer of him. It was the one time I saw him when he was not completely in control.

I guess I am not surprised that following deregulation in the United States, there were disruptions in the business. It seems to prove to me that when you had deregulation and trucks are not leap-frogging over one another, an empty truck going east-west and one going west-east and meeting each other, they start saturating the market. It does not surprise me that it shows a percentage of overcapacity in the business. It always follows—you know it as an economist—that when you have overcapacity you have people bidding for the remaining business and some of them go out.

I sort of question if it really tells the full story about deregulation when you zero in on that period of time—also coinciding with the recession, but setting that recession aside—when the overcapacity is flushed out of the industry and use that as a result, it being the bad time of deregulation. It seems the other side of it is that all those customers out there who were being individually serviced and all those empty miles, with less gasoline consumed, less manpower involved, less pollution, less highway use—

Mr. Whitestone: Sure.

Mr. McGuigan: —all of those things eventually lead to a higher standard of living, but it is littered with casualties along the line. I think that as an economist, you are only giving us part of the story when you zero in on that period of time. I just wonder what your comments are.

Mr. Whitestone: Would the committee object if I told a comment about economists? Would it be appropriate?

Mr. McGuigan: As long as it is printable.

Mr. Whitestone: Perfectly printable; nothing else but that.

There were three people arguing about what is the oldest profession, and they were not what you think. There was a doctor, an engineer and an economist. The doctor said: "Clearly, mine is the oldest profession. Eve was created out of Adam's rib and it required a doctor." The engineer said: "Oh, no, the engineering profession is older. Order was created out of chaos and that, of course, required an engineer." The economist piped up and said, "Who do you think created the chaos in the first place?"

I told you I am an economist. I am not involved in the trucking industry at all. I am trying to be as objective and candid as I possibly can. I was not trying to give a one-sided presentation at all. I think deregulation would

lead to many benefits; frankly, it would. After there was a shakeout in the industry, it would lead to the fact that certain people would derive benefit. They would get lower rates and probably more competition.

But I think, as a corollary to it, you would find that the small shipper, again, would be hurt. If you and I wanted to start a small oil distribution company, we would not have a hope in the world because the big company would be getting the better rate. There is always going to be that factor. On the less travelled route, I do not know what kind of service you would have. I think it would be pretty terrible, but in certain areas, the heavily travelled corridors, you would derive a lot of benefit.

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It is rather like people in the postal service, is it not, where there is a big cry for privatization. Heaven knows, something should be done in the postal service. But sure that is true: if you had a private industry, you would certainly have mail delivery a heck of a lot better than it is right now. I do not know who would be delivering mail to the Northwest Territories, but in certain areas you would have much better service, and you would have to weigh which way you want to go.

I think the small shippers in the out-of-the-way places would never be as well off as they would be under regulation. The safety factor, I guess, eventually could be surmounted. But I have no brief; I am totally objective. The gentleman in my area who asked me to show up here was in the trucking business, but he did not choose to come along, so I am being as honest as I can.

Mr. Wildman: Mr. Whitestone, I think you could sum up your presentation with the phrase, "Plus ça change, plus c'est la même chose." Basically, what you are saying is that without regulation, the market will make the decision. I think all of us recognize that. The question is, whom will that benefit and will it benefit society as a whole?

Certainly, the shippers, the major shippers particularly, have indicated to us that they believe there is not enough competition now and that they want to be able to hire anybody who is prepared to deliver for them, without restriction. That would be their choice. What you are basically saying is that the experience in the United States does not bear that out, in the sense that there is more competition on the major routes and lower rates, but the smaller communities and businesses have been hurt. We have had that told to us and it has been disputed before the committee as well.

How do you deal with the argument that if there is open entry into the business, then small carriers will develop that and will go into the business to serve local areas, and that through brokerages and so on, they will be able to provide service to those small businesses and communities that the major carriers would be less likely to want to serve or would be less able to serve if they had to deal with much lower rate structures?

Mr. Whitestone: Just thinking off the top of my hat, that probably has some validity. The history of unfettered free enterprise, however, is that unchecked, the big companies do not want any competition and decisions are not based on economic merit. Let me allude to a story.

Before I worked for the government of Canada, I worked for Power Corp. Automatically, in Power Corp., I was a director of a company called Celanese

Canada—this is not going to be a very windy story—which was a subsidiary of an American company called Celanese Corp. of America. This was 20 years ago when Britain was under Imperial preference; in other words, goods could be shipped to Britain duty-free under Imperial preference. Celanese Canada had got an order from Britain for some material, and of course, it would have been advantageous for Celanese Canada to make it in Montreal and ship it to Britain. The parent company said: "Nix. We're not very busy here. We'll make it and ship it from New York." So decisions often are based on things other than economic merit.

Your comment would follow that logically, of course, and in certain cases it probably is true, the small shipper or the small trucking company would be able to provide better service in certain areas. The big companies might just say in a time of economic stagnation or worse: "We don't want any competition. We have a truck sitting empty here. We will do it for cost. We have hired this truck driver for \$35,000 a year and he's sitting around twiddling his thumbs. We'll do it for cost just to keep the truck busy."

The local fellow will not have a hope in the world. But there are certain cases in which your comment is quite possibly true.

Mr. Wildman: The suggestion has been made before the committee that initially after federal deregulation of trucking in the United States in 1980, there was an influx into the marketplace and there was a period of what some people have referred to as predatory pricing and a shake-out, as everybody recognizes there will be.

There have been suggestions that there is an overcapacity now and that there should be a shake-out of the industry that has resulted, over the seven-year or eight-year period, in far fewer majors than there were before. It would be a beginning, at least, of an increase in rates.

From your research, is that what you have found has happened in the US? If so, do you think that similar experience would happen here?

Mr. Whitestone: Very truthfully, I do not think that series of events was discussed here, but I think it follows quite logically and it is what I would expect. What you call predatory pricing does happen. In international trade, it does occur.

What the Japanese have done in world trade, of course, is focus on a certain area and literally drive out domestic producers in various countries. I suppose the next thing that will follow will be that they will charge what they can or what they want. It is the history of capitalism. I work for an investment firm so I am not anticapitalist at all—quite the opposite—but I think the history of unfettered markets is that that is what they will do.

There will be a shake-out and a lot of people will go to the wall. In that process a lot of people are going to be hurt. But then when a few dominant ones control the market, the prices will not be competitive. There will be collusion. How are you going to prevent collusion and winking?

Look at the petroleum industry. Have you ever seen anything more obviously collusive than pricing at local service stations? You have to be very careful here. I know that the history of that. There was a case in Canada where there was a case before a court in Montreal and Justice Kenneth MacKay actually cited one of the people for making some reference to the fact that there was collusion. He cited him for contempt of court. So you have to be

careful. Sugar prices were all raised simultaneously and somebody said, "Is that not really collusive?" The judge said, "How can you allude to our lack of integrity when we said there is not?" But there is that kind of collusion. I think there will be again.

If you have deregulation of rates and all you have to do is publish them, where is that going to leave the little guy in the long run? Who is going to know whether they meet over dividing up territory and dividing up areas? Why will they not do that? I think the burden of proof lies on the people who have said there will not be. Why will the big ones not get together? They say, "Look, I'll take this area and charge what I darned well please if you take the other area." That is what they do.

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Mr. Carrothers: The fact that you cite is the petroleum industry and possible collusion—I want to use that word for the sake of discussion here. Surely the cost of entering the petroleum business is fairly high. The cost of entering the trucking business is not that high. If a number of players begin to dominate the marketplace to the extent you are alluding to and start raising their prices with this new regime proposed, where essentially one just has to prove fitness—in other words, you are not going to have to go through a board or do anything else to get your licence to operate—surely other players will come in and limit some of this, will they not?

I do not know whether your allusion to the petroleum business is quite accurate, given the different costs of entering the two businesses. The cost of entering the trucking business could be as little as buying a truck; \$20,000, I am told, is the down payment. Surely that would make a difference.

Mr. Whitestone: I think you have a point there which I would agree with. I would admit it. The analogy with the petroleum industry is far from perfect, but I do think that knowing how big companies operate I could some day bend your ear and tell you a lot that if a little guy tried to come in and the big fellow did not want him in—or did not want him or her in, I guess we should say—he darn well would not be in very long. He really would not be.

I can tell you instances, I am afraid, where they have done that. I agree the analogy with the petroleum industry is probably overdrawn.

Mr. Carrothers: The (inaudible) share of the marketplace (inaudible) seems like competition is supposed to be able to deal with it. Whether they do or not is another issue, but surely that is a problem shared across the economy and not specific to the trucking industry.

Mr. Whitestone: Yes, but the question is essentially—

Mr. Carrothers: If we follow that logic in any industry, a big player could dominate. That does not seem true in too many industries.

Mr. Whitestone: Sure. That is right. But the question is, of course, how essential is transportation? That is the key one.

Mr. Carrothers: It is easy to get in—certainly with the economics I work with, it is easy to get into the business. The people will get in if prices rise; if profits margins increase, new people enter the business.

Mr. Pouliot: Mr. Chairman (inaudible), and my distinguished colleague knows it only too well.

Mr. Wildman: That raises a couple of things in my mind. First, we know there has been an investigation at the federal level with regard to petroleum pricing that has been ongoing for something like eight or 10 years. If we are dependent on the competition laws at the federal level to protect us then we are not going to get much protection.

The other thing that is interesting is that I think Mr. Carrothers is quite correct. I think there will be an influx of small guys into this industry. I think a few years later there are going to be a lot of small guys who have lost their homes as a result of getting in, mortgaging to buy a truck and then being faced with the kind of competition Mr. Whitestone has talked about.

The final thing I want to say is what you have said about what I think you referred to as "unfettered capitalism." It is central to what you referred to earlier about the free trade debate. It helps to explain, as Mr. Simpson from the Globe and Mail did on the radio this morning, the various positions taken by various political parties in this country, because the free trade debate is essentially about a free market.

Since the Conservative Party in Canada tends to be very much in favour of a free market, it makes sense that it is in favour of free trade. Since the New Democrats tend to be rather leery of a free market, they are against free trade. And since Liberals tend to be ambivalent about a free market, they are ambivalent about free trade.

Mr. Whitestone: May I make an observation in reply to Mr. Carrothers? Mr. Carrothers mentioned that the difficulty of access in the petroleum industry makes it not analogous to the trucking industry, which I would agree with.

However, you probably know, and I read, that for example the small wholesale distributor who is only peripheral to the gasoline distribution business is really not allowed to compete. That is a really small operation. But the major players in the oil industry will not even allow the small distributor to function in Kitchener.

There were stories about it in the Kitchener-Waterloo Record, I would say about a month ago. They had a volume of a couple of hundred thousand dollars a year, and they would not even let them survive.

Mr. Carrothers: The point would be, though, that they have to buy gasoline from somewhere. With only three or four refiners and the cost of getting into the refining business, that is what gives the control. The cost of entry and the difficulty of entering the business are what gives them the ability to control the market, assuming they do just for discussion purposes. I think it is different from what will happen.

Mr. Whitestone: Yes, to some extent. But I think the big companies also would—

Mr. Carrothers: I do not deny that large companies may try to compete very hard and knock out the little guy, but I think it would be easier to get into the here, and therefore their ability to control would be really limited.

Mr. Whitestone: Also, of course, without adequate safety measures, all kinds of things could happen. I certainly concede your point, Mr. Carrothers.

Mr. Chairman: Mr. Whitestone, thank you very much for appearing before the committee. It is good to have a witness who recognizes that ideology is a legitimate component in issues like trucking reform legislation, as opposed to deregulation, of course.

Interjection: Reregulation.

Mr. Chairman: Reregulation is acceptable. Thank you very much for coming before the committee.

Mr. Whitestone: I appreciate the committee's time. Thank you, ladies and gentlemen. I would appreciate it if you people would at least look over the brief you have, which I think would be very informative to you all. Thank you very much for your time and patience.

Mr. Chairman: That completes our afternoon's work. The next time we will meet will be on Tuesday, September 13, here in Toronto, when we will complete our public hearing process. I sure hope you can all join us that week because we are going to get a chance to visit Sault Ste. Marie. On that uplifting note—

Mr. Pouliot: We are in the Sault on Thursday.

Mr. Chairman: On Thursday, yes.

Mr. Carrothers: As a visitor to this committee, Mr. Chairman, I would just like to say I will not be able to join you, but I have enjoyed my week on this committee.

Mr. Chairman: Thank you, Mr. Carrothers.

The committee adjourned at 4:36 p.m.

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STANDING COMMITTEE ON RESOURCES DEVELOPMENT

ONTARIO HIGHWAY TRANSPORT BOARD AMENDMENT ACT
TRUCK TRANSPORTATION ACT

TUESDAY, SEPTEMBER 13, 1988

Morning Sitting



STANDING COMMITTEE ON RESOURCES DEVELOPMENT

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Substitutions:

Beer, Charles (York North L) for Mr McGuigan

McGuinty, Dalton J. (Ottawa South L) for Ms. Collins

McLean, Allan K. (Simcoe East PC) for Mrs. Marland

Nicholas, Cindy (Scarborough Centre L) for Mr. Miclash

Clerk: Mellor, Lynn

Clerk pro tem: Arnott, Douglas

Staff:

Drummond, Alison, Research Officer, Legislative Research Service

Witnesses:

From the Ministry of Transportation:

Kelch, Margaret, Acting Deputy Minister and Assistant Deputy Minister, Safety and Regulation

From Volume Tank Transport Inc.:

Watkins, Gary, President

Individual Presentation:

Morris, Hugh G., Barrister and Solicitor, Morris/Rose/Ledgett

From the Ministry of Transport, Quebec:

Boulet, Jean, Director, Highway Transportation of Goods

LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON RESOURCES DEVELOPMENT

Tuesday September 13, 1988

The committee met at 10:07 a.m. in committee room 1.

ONTARIO HIGHWAY TRANSPORT BOARD AMENDMENT ACT
TRUCK TRANSPORTATION ACT
(continued)

Consideration of Bill 87, An Act to amend the Ontario Highway Transport Board Act, and Bill 88, An Act to regulate Truck Transportation.

Mr. Chairman: The resources development committee will come to order. We welcome members back for another week of stirring debate on trucking. Before we get going this morning, Margaret Kelch from the ministry had a handbook to table for members on trucking in Ontario. Did you want to speak to it?

Ms. Kelch: Just quickly if I may. What I am having the clerk deliver to you are two pieces of paper. One is a handbook for trucking in Ontario and the other is a description of the fitness standard as proposed in the Truck Transportation Act.

There are three pieces specifically to which the committee has referred and asked queries in the past. There are three pieces on fitness in Ontario, one being the certificate of competency, the second being the commercial vehicle operators registration and how that works. Finally, there is the application itself for fitness.

I think there was some interest expressed in terms of exactly what the fitness test looked like. That is the package. If there are any queries, we will be pleased to entertain them.

Mr. Chairman: The clerk for this week is Doug Arnott. Most of you will know him, I think. We will be handing out the airline tickets for Sault Ste. Marie for Thursday morning for those of you who are travelling north with us.

This morning we have two representations. The first is from Volume Tank Transport, Gary Watkins. With him is Hugh Morris. They are splitting the time between them in a way that they have worked out. I do not know who is going first. Mr. Watkins?

Welcome to the committee. Go ahead. I think everybody has your presentation.

Mr. Watkins: I think I have outlined my views in my brief.

Mr. Chairman: Do you want to go through it? The members have just had it placed in front of them now. We have been away for a week, so you might want to go through it with us.

VOLUME TANK TRANSPORT INC.
HUGH G. MORRIS

Mr. Watkins: I am Gary Watkins, the president of Volume Tank Transport Inc. and Quality Transport Services Ltd. I am also a partner in two other trucking companies and an officer and director of those companies. We are involved in intraprovincial, extraprovincial and international trucking. I have been in the business since 1958. Our 1988 sales for the entire trucking group will be approximately \$58 million.

First, let me say at the outset that I am in favour of Bill 88. This may come as a bit of a shock to you as I imagine many of the representatives of the trucking industry who have appeared before this committee have spoken against this legislation. Let me briefly explain to you why I believe that reregulation of the trucking industry would be in the best interests of the economy of Ontario.

I should point out that Volume Tank Transport Inc. already holds a wide-open intraprovincial trucking authority for our tank vehicles. We are not here today urging the government to deregulate the industry so that we can obtain the authority we need; for the most part, we have the intraprovincial operating authority we require. But speaking as someone who has been through the system for several years and has spent hundreds of thousands of dollars and what seems like almost the same amount of hours obtaining the authority we presently hold, I am here today to urge the government to proceed with the passage of Bill 88 and the reregulation of the industry.

Let me also say at the outset that we would not want to see any legislative changes in any way compromise safety on our highways and/or in the environment. We are 100 per cent in favour of regulation from a safety perspective. We do not believe the Truck Transportation Act, as presently proposed, in any way compromises safety.

Let me also say at the outset that we do not believe the implementation of the legislation should be held up because of the Ontario Trucking Association's concerns regarding a reciprocity provision. We believe such a provision, while possibly desirable, may be meaningless in that the American carriers could currently start up or purchase an Ontario trucking company to make licence applications, thus rendering the reciprocity provision irrelevant.

There are some legitimate concerns about the new legislation. In particular, we are concerned about the provisions which would enable the ministry enforcement staff to pull trucks off the road if they suspect a problem and to charge the carrier for the storage of that vehicle even if there is no problem discovered. The point, however, is that we believe these are problems which can be dealt with without delaying the implementation of the legislation. Quite frankly, we believe those self-interest groups that have appeared before this committee speaking in opposition to the legislation have simply been indulging in delaying tactics, attempting to protect their own interests and maintain the present system which looks after monopolies and does not encourage competition. As a result, the public is continuing to pay higher rates than necessary and is not receiving the service it deserves.

I am a free enterpriser. I believe in competition. Volume Tank Transport is not afraid to compete with any carrier, and by that I mean compete in terms of rates, service and equipment—I also would like to add safety here—and not by the terms of our operating licences. I am confident that the passing of

Bill 88 will result in better service and rates to our province and will generally stimulate our economy. I share the opinion of the Honourable Ed Fulton and quote from a letter received from him February 11, 1988:

"The points you make in your letter about how the existing regulatory structure impedes services and competition serve to reinforce my views as to why reform must proceed. I am particularly confident that the greatest benefit of reform will be felt in northern Ontario, as a result of growth and trucking services, greater competition and more involvement by local operators, all of which will serve to stimulate the northern economy."

If there are to be any changes in the proposed Truck Transportation Act, we would suggest the following: The proposed time frame for implementation of reregulation of the trucking industry—there is a three-year transition period, during which time new entrants will be subject to a public interest test—is too long. This type of delay in economic deregulation will also delay the economic benefits expected from that deregulation. Why have a public interest test hearing process at all? If a carrier has been deemed fit, and assuming we will have a meaningful fitness test based on safety, why drag out the process by having a second barrier, i.e., the public interest test?

Finally, I would like to add my voice to the many voices across the country that have been speaking out for uniformity in the regulation of the trucking industry in Canada.

As a carrier who engages in international, extraprovincial trucking, we are well aware of the drastically different licencing systems in every province, ranging from practically no regulation to an expensive, time-consuming and wasteful system of economic regulation. The passage of the Truck Transportation Act will at least be a step in the right direction and uniformity, as other provinces have already reregulated or are in the process of regulating.

I believe those comments summarize my concerns. I would be more than happy to attempt to answer any questions you may have on these comments.

Mr. Chairman: Thank you. Mr. Morris, did you want us to deal with Mr. Watkins first?

Mr. Morris: I think it probably would be better. My comments do not really directly relate to his.

Mr. Chairman: Okay. I would caution members that we are trying to do two presentations within the hour, so they should be brief.

Mr. Pouliot: Mr. Watkins, on page 2 of your presentation, you admit you are a free enterpriser indeed. Would I be right in assuming that you favour free trade?

Mr. Watkins: Yes, I do.

Mr. Pouliot: Do you see this trucking regulation or deregulation as an important component of that philosophy of free trade? I am talking about exchanging goods and services, commodities, trucking back and forth with the US.

Mr. Watkins: Yes, I do, providing we are on an even footing.

Mr. Pouliot: One thing I find rather difficult, as a member of the committee with the opposition, is that one government would go to some length to tell us it is against free trade and yet, very willingly and candidly so, go for this proposed legislation.

What is your experience with servicing northern Ontario?

Mr. Watkins: In which way?

Mr. Pouliot: How many of your trucks are servicing northern Ontario on a daily or weekly basis?

Mr. Watkins: We have terminals in the north, in Thunder Bay, for example, and we service northwestern and northeastern Ontario on a daily basis.

Mr. Pouliot: You are talking about small communities away from, let's say, Highway 11 and Highway 17?

Mr. Watkins: I am very familiar with where you are from in Manitowadge and the standard of service that is being provided there, because I worked and ran a trucking business there for five years.

Mr. Pouliot: What a fortunate twist of fate indeed, and I bring you greetings.

Having said this, one of your colleagues, Reimer—I am sure many of your trucks have been behind or ahead of his on both Highway 17 and Highway 11—offers a different opinion. He is of the opinion that with reregulation competition for service to small towns in northern Ontario will suffer.

Mr. Watkins: I disagree with that.

Mr. Pouliot: You disagree with Mr. Reimer, who is certainly an important component; he is a major player in servicing northern Ontario.

Mr. Watkins: I am not sure, but I believe he is more an extraprovincial carrier rather than an intraprovincial carrier.

Mr. Pouliot: Yes, a good point indeed. Nevertheless, he services on a daily basis on less than truckloads and he made a very compelling, interesting argument.

1020

I have one last question. Are you aware that under the reverse onus—I say this because you have, Mr. Watkins, some reservations regarding the "three-year phenomenon"—under the proposed legislation in Bill 88, an objector would have to come forth with a significant argument. In other words, he would have to prove that the granting of a licence would be a significant deterrent to public convenience, so it would be very difficult and very costly for an objector. You have a reverse onus under the present legislation.

Mr. Watkins: Yes.

Mr. Pouliot: You are aware that you must prove public necessity and convenience. What is being proposed here is that you do away with this. Then the onus is on the objector to prove not only that public convenience and

necessity will not be served, but that it is in a significant way. So it is almost impossible for an objector to do so. Therefore, it renders the clause in our opinion—we the opposition, of course—somewhat meaningless and alleviates any fear that one would have.

If I were to tell you that, would you go away happy? When you leave here today, would you say: "Of course, the clause is meaningless and I do not have to be worried about it. Therefore, the three years will expire and it will find its normal death." What we are saying is that the clause is meaningless. The government is saying the opposite, of course, but we are used to that type of approach, style and methodology. But we have learned not to take those words as gospel.

Are you satisfied with the way the bill exists at the present time, even with the clause of the three-year time limitation?

Mr. Watkins: I do not know whether I totally understand the question. Are you suggesting that it would be nearly impossible to prove that it would be detrimental to the public's interest?

Mr. Pouliot: You are right. I am suggesting exactly that. There is - no need to have any fear that the clause is meaningless. It is very difficult with the proposed statutes to come forward and prove significantly that someone will not act for public convenience and in the public interest.

Mr. Watkins: I would agree it would be difficult.

Mr. Pouliot: One last question. You are fully satisfied with the safety aspect in it? You do not fear that, as competition gets keener—

Mr. Watkins: It does not bother me at all.

Mr. Pouliot: Do you feel people will be just as safe?

Mr. Watkins: I think they will have to be as safe, as long as there is enforcement. But for our particular company, I do not have a problem with that.

Mr. Pouliot: Therefore, you would be comfortable with the ministry's ability to monitor compliance?

Mr. Watkins: Yes.

Mr. Pouliot: So they are doing a good job right now in terms of safety?

Mr. Watkins: I would think there is always room for improvement.

Mr. Pouliot: That is right. So with more trucks there will be room for a lot more improvement.

Mr. Watkins: Do you think there will be more trucks?

Mr. Pouliot: Yes.

Mr. Watkins: I do not think there will be more trucks.

Mr. Pouliot: I have been provoked, Mr. Chairman. Just one last question. It took me a little time this morning, Mr. Watkins. You said, "I am a free enterpriser," and right after—it is my last question, indeed—you said, "I believe in competition."

Mr. Watkins: Yes.

Mr. Pouliot: Are we talking here in terms of takeovers, in terms of mergers? Competition at the marketplace is the essence of the free enterprise system.

Mr. Watkins: If I can just speak for ourselves personally, because again I do not know whether I totally understand where you are coming from, we do not plan on making any acquisitions. If you are worried about more trucks, there are only so many millions pounds of freight to be moved. It only takes so many trucks to do it. If there are too many trucks, it will be survival for the fittest.

Mr. Pouliot: I want to close with my last comment. Thank you so much Mr. Watkins. Transport Route has announced this morning that it will be filing for bankruptcy. It is a major player to the tune of 2,500 jobs.

Mr. Beer: It is always a pleasure to listen to the comments of Mr. Pouliot and to see his courtroom manner, even though he is not a lawyer, in leading to interesting conclusions. We certainly appreciate his comments on the issue of free trade. On this side, we will be delighted as these hearings go on and as his mind becomes clearer on the difference between the issue that we are dealing with and the other issues.

Mr. Chairman: Provocative.

Mr. Beer: I always feel one should exchange thoughts and ideas. I would like to thank you, Mr. Watkins, for your comments, which were succinct and specific and quite clear.

I have two questions. The issue of reciprocity is one that has come up a great deal in the discussion around these bills. You note in your brief that you do not think it is a problem because there would be a way around it for American trucking firms. I was wondering if you could comment on what problems you have, if any, right now with respect to competing with American trucking companies, and why it is you feel this legislation will be an improvement on what exists in that respect.

Mr. Watkins: As I point out, if they are really interested in business here, they can either purchase a company or—I guess the thing I find in the marketplace I compete in, in part, is that the Americans are here now and we are at a disadvantage because they are licensed to come in here and we are not licensed to get out of Ontario.

I can be really specific. I am losing business as recently as yesterday. I had an account for eight years. We were getting \$1,700 a load to bring a straight load out of Chicago in tanks. It has gone to \$1,300. Chemical Leaman Tank Lines were in yesterday. It is \$1,200 or lose the business. I cannot get a licence to move out to compete there—that is done through a leasing arrangement—so I have a handicap.

The Americans are here now, going around to the companies that are trip leasing and they are intimidating them. We have some temporary permits to

operate. I heard as recently as yesterday that after September 30, the board will not be granting any more. It has been turned over to the ministry and it is denying them. So I have no choice; my business will go to the American carriers.

I am constantly losing out, every day. It is competition, but I am not on an even footing here. I do not mind competing with the Americans. I have no problem. We hold a 48-state authority. I cannot get an authority to get across that border, so I am at a competitive disadvantage. Put me at the same starting gate. I do not want to be 30 or 40 feet behind when we start the race. Then, if I sink, that is great, but you cannot put me in a ring in a boxing match and tie my hands behind my back.

Mr. Beer: So in your view, what this legislation will do will not necessarily give you a completely balanced field, but you feel this gives you a better opportunity to compete.

Mr. Watkins: Yes, it gives me an opportunity to compete on an even footing here.

Mr. Beer: Okay. A second brief question on the public interest process: could you just go into a little more detail on your concerns about that in terms of the process that will be in effect with the new bill. You said before that when you get the licence you will be deemed fit and to have met various things, so why have—

Mr. Watkins: In my understanding, that comes first. You have to be deemed a fit carrier. If you are fit, why have the public interest test? That is just more money, more time and expense. We would like to get on with business. We are very much at a competitive disadvantage because of the expense we go through.

Mr. Beer: In your perspective, though, is there a difference between those two functions that would go on in terms of the initial process and then the second public interest hearing? Is that second one a more involved, broader—

Mr. Watkins: If you fill out an application now, I think they look at it and determine whether you are a fit carrier. If you have all the credentials and a track record and they deem you to be a fit carrier, why have any public interest test? I think it would be very difficult to prove it would be detrimental to the public interest for someone to be licensed, provided he has his credentials.

1030

Mr. Wiseman: You mentioned you are president of two companies and a partner in a couple of others. Can we take it they are all Canadian companies?

Mr. Watkins: Yes, they are.

Mr. Wiseman: You mentioned a level playing field and that you thought this legislation would help you and be beneficial and everything, but I wonder. Most of the truckers would agree with the legislation, provided it was on a more level playing field. You did not mention anything about the cost of rigs being a lot more in Canada than in the United States. I have heard from some truckers that it is \$12,000 more a rig. The sales tax is eight per cent here and nothing down there. The provincial tax on truckers in Ontario is

higher than it is in Quebec or any of the states. Of course, there is the fuel and the depreciation on the rig and the tractor.

Do you not think those sorts of things should be looked at, so that you do have that level playing field and are able to compete, as you mentioned, with those tanker loads from Detroit or wherever it was? Do they not have a distinct advantage, even along those lines? Would you not like to see them smoothed out a little?

Mr. Watkins: I believe that is a national issue that has been addressed at the moment.

Mr. Wiseman: No, half of those are provincial and the others are federal. We have some of the people here today who deal with the provincial sales tax.

Mr. Watkins: I would agree the American carriers have a competitive edge on us, yes, for those reasons, certainly in the depreciation schedules and the price of fuel, and they also have a 25 per cent buying-power advantage.

Mr. Wiseman: I am only a small businessman, but that sure adds up to a 15 or 20 per cent disadvantage to you in my books. If you have to compete with their prices of \$1,200 a load or whatever you mentioned and then 15 to 20 per cent of that goes in taxes, one way or another, you are really disadvantaged, are you not?

Mr. Watkins: I agree with that because it is very costly for us to operate on American highways, with various trip permits, fuel permits, road taxes, road tolls, bingo cards, etc. In Ontario, they do not have to buy those permits or as many things as we do. I think that is great.

Mr. Wiseman: As you read your brief, you are about the only one of the truckers I know of who has come in and thought it was—pardon the expression—the best thing since sliced bread to get Bill 88 through. Perhaps, if you took some of the other taxes and things into consideration and got some concessions on those, it would be a lot more palatable for the trucking industry to swallow.

Mr. Watkins: It would, but I guess they are really not addressing this issue here in Bill 88 to that extent, as I understand it.

Mr. Wiseman: But if they do not address it in Bill 87 and Bill 88, it is not going to be addressed and I feel you are going to be thrown in there at a real disadvantage financially.

Mr. Watkins: We are at a disadvantage now and we are managing with a lot of difficulty.

Mr. Wiseman: The main thing is that playing field being as smooth as it can.

Mr. Brown: For the sake of clarity and for the sake of clarifying my colleague's view, I think we are speaking about intraprovincial trucking here. In that case, you would agree that you need to use a Canadian truck. Therefore, even if the Americans own that truck, they have paid the same sales tax and they have the same depreciation schedules. They have everything, as long as they are trucking within Ontario and therefore they are on a level playing field in Ontario. That may not be the case for extra-trucking, but

within Ontario it is. Is that not correct? Is that not how you see it?

Mr. Watkins: Yes, that is right.

Mr. Wiseman: I would like to correct something. We heard last week or the week before last that many of the American truckers who have a licence to come over here, who have a setup here in Ontario are sending over leased trucks, that they lease them to the ones up here. They have all those advantages I just mentioned, and they are able to do this legally. That is why I asked, after Windsor, that we check to make sure customs was catching them and charging them whatever the rate was really worth so that they could not do this. But I understand they are buying them in the United States, leasing them to their operations here and taking full advantage of some of those things I have mentioned.

Mr. Watkins: Yes, but they are not working within the province of Ontario; they are an extraprovincial carrier. I think Mr. Brown makes a very good point.

Mr. Wildman: As long as they have a Canadian driver.

Mr. Watkins: But you are talking about an extraprovincial movement. They are not licensed to work within Ontario at the present time.

Mr. Wiseman: But as I understand it, if they have just a small enterprise over here, a small office, they can lease the trucks up here with all the advantages they have down in the United States that we do not have over here. I understand that is being done.

Mr. Watkins: I am not sure of the tax structures, but if he is an extraprovincial carrier, that is a national issue. Here, we are dealing with a provincial issue. We are talking about working within. If they are going to set up here, I would assume and hope that whether they are American, English, German or whatever, they are subject to the same rules, regulations and taxes that we are.

That is a national thing. You are talking about moving the freight extraprovincially. We can do the same thing. We can save those taxes. If we buy equipment in the US, as long as we are crossing the border—it does not work within the province of Ontario or with any province—we do not have to pay duty, we do not have to pay Ontario sales tax, and there is another tax. But we cannot work within the province of Ontario with that, because then we are subject and liable to that.

We just went through that because we purchase equipment that is American-manufactured and is bought in Ontario through Ontario dealers. We looked at that as a possibility. What made us nervous about that was that we might get it in Ontario, pick a load up in Toronto and go, say, to Manitouwadge. Then what do we do? Then we are subject to the tax.

We pay all the taxes, but if we had a dedicated run where we knew it would just be crossing the border, we would not be subject to those taxes. Maybe that is what you were referring to. If the Americans are doing the same thing, they are not subject to our taxes.

Mr. Wiseman: The ones I was talking about—I know it to be a fact in one or two cases—have a small base here in Ontario and are leasing them to

that base, but buying them down there. That is a definite advantage. They get all the write-offs in the United States and the whole bit.

Mr. McLean: If I am a Canadian trucker and I want to do business between here and the United States, how many states can I get into without having a problem?

Mr. Watkins: I have a 48-state authority.

Mr. McLean: Can any Canadian trucker get that?

Mr. Watkins: Five hundred dollars in legal fees and it is done.

Mr. McLean: It is my understanding that the United States has a rigid regulatory structure which insists on the base operating in the United States. Is that right?

Mr. Watkins: I am not aware of it.

Mr. McLean: What you are saying then is that any trucker in Canada can trade freely and transport in the United States, and the United States can come in here just the same.

Mr. Watkins: No, the United States cannot come this way.

Mr. McLean: They will if this is passed.

Mr. Watkins: No, that is a national issue. You are talking about an extraprovincial authority. My understanding of Bill 88 is that we are dealing within the province of Ontario, that it is intra.

Mr. McLean: There are all the applications then that United States transports have made here in Ontario. Why have they made all those applications?

Mr. Watkins: To work within, or are you talking about extraprovincially?

Mr. McLean: Extraprovincial, in Ontario.

1040

Mr. Watkins: In my understanding, you are confusing the two issues. But my answer to that would be that we compete very freely in the US, and why should the US carriers not compete very freely here? That is a national thing. That is an extraprovincial authority. That is not what we are talking about here.

Mr. Miller: You made the statement in your opening statement that you are "concerned about provisions which would enable ministry enforcement staff to pull trucks off the road if they suspect a problem and to charge the carrier for the storage." Would you want to expand on that? What is the procedure now?

Mr. Watkins: I just scanned through this some time ago, but my understanding is that if an enforcement agency takes a truck off the road and impounds it under suspicion, for whatever reason, and you have a clean bill of

health, you would have to pay for wherever they impound the truck and things of that nature, which I feel would be very unfair.

Mr. Miller: I agree with you. I just wondered, what is the procedure now? Is this in place at the present time?

Ms. Kelch: We currently do not have the ability to detain a vehicle. Just to clarify Mr. Watkins's point, we would not detain a vehicle if we did not have very strong suspicion that there was a safety problem. What the new legislation gives the government authority to do is to hold a vehicle aside until the safety concern has been addressed.

Mr. Miller: Is there a charge for that, a fee for storage?

Ms. Kelch: I guess it depends where the vehicle is found to be a problem. If it is just at the truck inspection station, there would not be a fee required, but if the vehicle is detained somewhere where there is nowhere to keep it, then obviously there would be some costs involved.

Mr. Miller: Is that a concern for you?

Mr. Watkins: Yes. I think it is unfair, provided you have a clean bill of health, if they pull your truck in for whatever, say for faulty brakes, detain it for a week, then do the inspection and there is nothing wrong with the brakes.

Ms. Kelch: But, Mr. Watkins, there would be no reason for us to detain a vehicle for a week unless there was a problem.

Mr. Watkins: I am going to the extreme—for any length of time. They do talk about that, where they can detain it. I do not know in terms of time; I guess that is not spelled out.

Ms. Kelch: I think the only time factor would be the time it would take for the carrier to improve the vehicle to the point where it is safe to move.

Mr. Watkins: Just re-reading that this morning, and I have not gone through it again, they talk about detaining it for trip permits, not carrying the proper documentation, etc. as well, but they certainly talk about the safety aspect.

Mr. Wildman: I apologize for being late. The delay was somewhat related to the deregulation of the aircraft.

My question really is supplementary to the questions Mr. McLean asked. You indicated, Mr. Watkins, that you have 48-state authority in the United States.

Mr. Watkins: We do have now.

Mr. Wildman: Does that allow you to do intrastate trucking; that is, can you truck from Flint, Michigan to Saginaw, Michigan?

Mr. Watkins: No.

Mr. Wildman: Okay. That is exactly what Mr. McLean was asking about, because we are talking about intraprovincial authorities here.

Mr. Watkins: Yes.

Mr. Wildman: He was asking about intrastate authorities in the US.

Mr. Watkins: He did not ask that.

Mr. Wildman: In fact, is it not the case that 43 out of 48 states in the continental US have very strict authority and control over intrastate trucking in the United States?

Mr. Watkins: I do not know how many, but in some of the states, yes.

Mr. Wildman: Okay. Is it not also the fact that states adjoining this jurisdiction, such as Michigan and New York, have very strict control, and that as a matter of fact Michigan just is not allowing any new trucking authorities intrastate?

Mr. Watkins: I do not know that.

Mr. Wildman: It is a fact, and the fact is that what you are suggesting, in support of this legislation, is that we should be providing freer entry into intraprovincial trucking in this jurisdiction, when states adjoining us are not giving reciprocal authorities for us. It just seems inappropriate to me that we would be proceeding to open up our jurisdiction for intraprovincial trucking when states such as New York and Michigan are not doing the same for our truckers.

Mr. Watkins: I am not aware of that. There is regulation but who is to say they are not giving licences out?

Mr. Wildman: Michigan is not. We have had testimony before the committee to that effect.

Mr. McGuinty: Thank you Mr. Watkins. I found your presentation refreshing and down to earth. You explained aspects of this which even I can understand, with very good illustrations. I think the reference you made to your experience as recently as yesterday regarding the unfair competitive situation is something like putting Mother Theresa in the ring with Angelo Mosca.

Mr. Wildman: You want to feel sorry for Angelo.

Mr. McGuinty: Yes, if you could pray long enough perhaps she would bring him to his knees.

I like your style and I would like it even if I did not agree with you. You have a loaded statement here at about the middle of page 2 that really caught my eye because it has been confirmed by what I have heard previously. You refer to self-interest groups which have appeared before this committee speaking in opposition to the legislation, who "have simply been indulging in delay tactics attempting to protect their own interests and maintain the present system which looks after monopolies and does not encourage competition."

Briefly, could you just elaborate on that? How does the present system

in your view serve the interests of monopolies and discourage competition?

Mr. Watkins: With the licensing system under the present state, what it creates are monopolies. It is as simple as that.

Mr. McGuinty: You would look at this bill as something which is an overdue attempt to update that which was implemented in 1928? Really it has become outdated?

Mr. Watkins: Absolutely.

Mr. McGuinty: I was hoping you would say that.

Mr. Pouliot: [inaudible]

Mr. McGuinty: It sure was, the most blatant of all.

Mr. Pouliot: We have had nothing but self-interest groups.

Mr. McGuinty: I do not agree with it so I put it in that category.

Mr. Wildman: I think most of the people who have appeared before this committee on both sides of the issue could be described as self-interest groups.

Mr. McGuinty: I think we are taking valuable time away from our guest.

Mr. Morris: I have asked the clerk to pass out some application forms which are in use before the Ontario Highway Transport Board. Let me say the following. First, I am a lawyer. I practise in Toronto. I have worked in the field of transportation regulations for the last 30 years. I notice Max Rapoport sitting behind me. He predates me by 20 years. A great deal of my practice, as well as that for six lawyers in my firm today, is involved in dealing with regulatory matters, whether they be truck, bus, rail or air.

I am here with two messages. The good news side of it is that I believe that the ministry is doing an outstanding job with respect to the commercial vehicle operator's registration system and the safety aspect of what the ministry is attempting to do. The bad news side is that I believe that we have an administrative nightmare. My firm is heavily involved in it, dealing with a ministry which has shunted aside the transport board and totally betrayed Responsible Trucking.

Those are strong words. I say them reluctantly because I have had the privilege of dealing with ministry personnel at both Downsview and at the transport board for 30 years and have found them unfailingly courteous. I hope that what I have to say will not be taken personally, but I believe dealing with both intraprovincial and extraprovincial transportation, we have a shocking situation. Let me give you some examples.

First, Responsible Trucking talked about a strong transport board—a transport board that would administer fitness and a transport board that would be strongly involved in the entire process. Originally Responsible Trucking involved committees from all segments of industry. A lot of the lawyers who practise in this area, including myself, contributed scores of hours to making this collaborative effort work, and it did work. It was well conceived, extremely well done.

1050

I agree with the ministry that the market test proposal in Responsible Trucking would not work. The theme was to let the people who know what is going on administer the act; but what has happened with the federal legislation—that is, the Motor Vehicle Transport Act—since January 1 is that the ministry has deliberately shunted aside the Ontario Highway Transport Board. What you have today is probably the best transport board you have ever had in 30 years, with outstanding people. All the bodies have been moved from the transport board to Downsview and all the functions have been moved to Downsview.

What is happening, and I will touch on it briefly when I come to it, is that people like Mr. Watkins are going to be in very serious difficulties if the ministry insists, starting on September 30, that the transport board cannot even issue temporary licences dealing with extraprovincial applications. Administratively, there is a backlog of hundreds and hundreds of applications for extraprovincial authority.

Let me have you look at, first, the original application form. I asked that they be passed out. These are application forms designed by the ministry dealing with extraprovincial transportation. That is the new federal reregulatory act that came into being on January 1.

I ask you to look at page 1, at the top of the document, and please take a look at the second document, which has "Lakehead Freightways" on it. I asked the board for a copy of the Lakehead application because I do not act for it and I know it filed this last March. You can see that the bottom part of the application form has been whited out, so when the transport board gets an application form, it is not even told who the corporate shareholders are. It is not told any of that information.

Go to page 2, "Contact Person." That name is put in there. "Past Performance"—that information is put in. On the third page there is the same information. But go to the fourth page, if you will, of the application form, "Description of Proposed Service." Take a look at the application form for Lakehead. It is there, it is handwritten information; but you will notice a lot of changes on the document. Those changes are being made by the ministry personnel without even phoning the lawyers saying, "We're going to change this." I have numerous examples where my applications have been changed and, I say this most reluctantly, changed to the detriment of my client. Unless we are vigilantly watching the Ontario Gazette, we are ending up with materials and applications published which are dramatically different from what we filed.

I am saying that the process is abominable. Those are strong words. I have had to hire an additional lawyer and an additional clerk since January to deal with the administrative nightmare that we have run into. I say, quite frankly, give that power back to the transport board.

Let me tell you why. In Bill 88, as well as in the federal legislation, Bill C-19, the transport board is to administer a public interest test. Take a look at the Lakehead application and take a look at the fifth page of the blank application form. Do you see where it says, "D. Scope of Operation"? The only question asked as to what an applicant is proposing to do is what equipment is owned? Are we all on the same one? It is the top of the blank one, "C. Description of Proposed Service" and "D. Scope of Operation."

Mr. Chairman: Is this the Lakehead one?

Mr. Morris: No, take a look at the blank.

We have a board that is going to get an application form, and it is supposed to determine if the granting of that licence would be in the public interest. The board, on the Lakehead form, does not get paragraph D. It does not even get the information as to how many trucks are proposed to be operating. More than that, I do not know how a transport board is to administer the public interest, if you want it to, if it does not get a business plan.

There is no question here. It says describe the proposed service. So they set out, "I want to go from A to B." But what is your investment going to be? Are you going to build a terminal in Ontario? Are you going to hire people in Ontario? All the transport board gets is an application such as Lakehead's. Mr. Pouliot will know Lakehead to be a very large carrier operating in northwestern Ontario. The board probably knows that but the board does not even get that information. I have to say I have discussed this with Mrs. Kelch, Mr. McCombe and Mr. Radbone and it is clear to me that what is attempted here is to take all that power, give it to a series of administrators at the ministry and leave the Ontario Highway Transport Board with virtually no power to administer the public interest test because the information is not there.

Let me tell you about the nightmare. Mr. Watkins is dealing with temporary licences and I will just give you that as an example. Historically, the system has worked because of its rigidity on the basis that the board really did not have the legal power but it did it anyway issuing temporary licences. You would file affidavits and supporting documents and the board has 35 years of written decisions. It understands the industry. Mr. Watkins has a move requiring specialized tanks moving a certain type of commodity between Chicago and Ontario. He goes to the board and typically it is fairly easy to get a temporary licence because the board understands. It understands the type of equipment that is required, the specialized nature of the equipment and it knows that Volume happens to be a good carrier. This applies to anybody.

In January, the minister said: "I will not issue temporary licences any more. I am the board." I think the Ontario Trucking Association went through that process and the Canadian Transport Lawyers' Association—this debate between the minister and the board. Never once in Responsible Trucking did the minister say, "Fellas, I am going to become the board and the transport board is going to become nothing."

Since January 1, we have been sending between 20 and 30 telegrams every week to the transport board to get temporary licences for our clients, because the minister said that the board did not have the power to issue them any more. Can you imagine the administration that is causing?

Now the minister is saying, "We are going to administer temporary licences." And it has become tighter than you would believe. It is very difficult to get a temporary licence. Mr. Watkins and several other carriers who are dealing with extraprovincial transportation are going to be in deep trouble either now or come September 30 because the minister is saying, "We are going to administer temporary licences" and I have a lot of clients who are in deep trouble because of that. I am serious and I am talking about Canadian clients, not United States clients. Quite frankly, I am very annoyed about it.

There has to be a solution. This minister has to be told that under no

circumstances is he to take that power from the transport board. Let them do it. They have the administrative process. I have carriers today operating between 30 and 100 pieces of equipment, competing internationally, who are going to be off the highway on September 30 unless I can get somebody, somewhere to say, "We will continue the process of the transport board issuing temporary licences on extraprovincial applications."

You cannot take even the most well-meaning person at the ministry and train them in a period of a month, two months or six months to have the judgement as to what is necessary in the public interest and that is what happening and this document passed out this morning—I am speaking quickly because I see that my time is going to quickly run out—but I see that the ministry is going to do the same thing. Under "Description of Proposed Service" it asks you to describe briefly how your operation will utilize the extension to the existing licence being requested. I will lay you dollars to doughnuts that information will not be given to the transport board.

Why? Freedom of information.

Now, we have a statute in Ontario that arose out of the McRuer report called the Statutory Powers Procedure Act. The board has dealt with it for years. I have confidential information. I do not want the opposition to see it. The board says: "You may file it, Mr. Morris, on a confidential basis. Lawyers on the other side can see it. Do not disclose it to your clients. We will have cross-examination in camera."

But what the ministry is doing is using the Freedom of Information and Protection of Privacy Act, aided by strong pressure from the Ontario Trucking Association, but basically saying, "We cannot legally permit that information to be disclosed to the public."

I say give the power to the transport board. Let the transport board take the original application form. Let the transport board administer the fitness test because I am telling you that bad operators are slipping through the system, people who have cheated and leased licences because it will not show up that they were convicted for anything. Let the board do the job because it will do it more efficiently. Let the board then determine with all the information, with an application form that says: "What are you going to do? What are you going to invest in? What kind of facilities are you going to build in Ontario?" Let the board then make a determination with all the information should there be a public interest test. I guarantee you the board could do it in a matter of three weeks.

1100

I went to the Ontario Gazette of August 27 and picked out the first six application forms. Now I am still talking about extraprovincial administration but intraprovincially under Bill 88 the same system is going to apply. It is designed under subsection 6(3) to have the registrar do just about everything and the board, I am willing to bet, will end up with virtually no information upon which to make a decision. This is federal legislation that is supposed to make it easier for Mr. Watkins to get that extraprovincial licence to operate between the U.S. and Ontario, designed to put Canadians into the marketplace to compete with the Americans. As I say, a backlog of hundreds and hundreds of applications. Canada Cartage filed April 6. Now, from April 6 to August 15 the ministry is taking a look at this document to determine whether the guy is fit or not. That is what they are doing. When did the transport board receive that application? Four months later they get the application form, published August

27. They can publish them quickly.

Humphrey Express—it is the second one—filed February 1. When did the transport board get it? August 15. What has been going on between February and August. What does the board get? It gets a Lakehead-type application form, which it looks at and it says, "Well, there is the name of the company. I don't know who the directors are. I don't know what their terminal facilities are. I don't know what equipment they have got and I don't know what they are planning to do and I don't know what their investment is going to be in Ontario."

So the board publishes it on August 27 and more recently then the board issues a decision saying, "We need more information." Now we have gone six months from the date of filing. We have had then the board get the document with virtually no information upon which to make an informed decision. It is then published in the Ontario Gazette and the board says, on a decision—I am looking at one 8th of July—"We need the following information: the names of the persons who own 10 per cent or more of the shares." I would have thought if somebody wanted to convene or conduct a public interest test, you would get that kind of information. "I want the name and address of their agent, a description of current operations. What terminal facilities do you have?" Now do we have to wait six months for the transport board to issue a written order after publication in the Ontario Gazette in order to determine the public interest as to what terminal facilities do you own? How much equipment do you operate? Do you own it? Do you lease it? Do you use brokers? What are you proposing to do? What area are you going to serve? What additions to terminal facilities are you going to make in the next two years? Will the equipment and the new investment be owned by you or be leased?

Now some of you, I am sure, come from municipal backgrounds. If someone was coming with a planning proposal, talking about the public interest and do I get four times coverage or six times coverage, surely you would want to know how big the building is going to be. You would like to know what kind of a facility it is going to be in relation to the surrounding area. None of this information is asked in the application form and the board gets none of it in the material that is sent from the ministry.

Mr. Chairman: Do you have much more to go, because we have—

Mr. Morris: Two minutes.

Mr. Chairman: All right.

Mr. Morris: Briefly, the guideline that the minister issued using the word, "significant," in dealing with extraprovincial transportation absolutely can assure you of lawsuits for a long time. I think that is the best I can say.

I can count you time after time my clients are being phoned directly. Now I understand there is a procedure going into place where this is going to be changed but my clients are being phoned directly and saying, "Your insurance has a 30-day cancellation clause. My piece of paper here says it has got to be 15 days." Now I would have thought the public would be better off with a 30-day cancellation clause instead of a 15-day cancellation. Why is my client being phoned directly? I mean I filed it. Why are they not phoning me? Now, I am told that you have to put our name in the area on the form. Now if the transport board was administering this it would have my letter on file. It would all be together. There would not be all this secrecy and blotting out

and waiting on materials and not sending it over.

It is terribly frustrating. I have many clients right now who have very serious potential for difficulties and economic impact, based in Ontario, if the minister continues to deal with temporary licences in the fashion the minister is proposing. If you let Bill 88 be administered in the same fashion, I believe you are in essence saying to the minister, "You administer the whole thing," because public interest will not mean a thing.

I am pleading with you now. Let the board do the job it is entitled to do. I can put at least four of my people to doing far more constructive work if I can let them get away from this administrative nightmare. The power is in the wrong place. It should be back at the board where they understand the industry and know how to do the job.

Mr. Chairman: Tell us why there are all these temporary licences. I do not understand why they are so important and why there are so many.

Mr. Morris: Let me take Mr. Watkins's example. For instance, he has a movement from Chicago to Ontario. He has applied, I believe, for open extraprovincial authority to operate tanks. It probably was filed in February or March—

Mr. Chairman: But why temporary? I do not understand the temporary bit.

Mr. Morris: Because he does not have his licence yet. He filed in February. It has taken us all this time to get it.

Mr. Chairman: I see. It is while he is awaiting a permanent licence.

Mr. Morris: While he is waiting. The ministry position is: "Give us time. Once this is in place, we are going to license everything that moves." By the way, the ministry is even phoning my clients who apply for truckload authority, one person's goods at a time, saying: "You're making a mistake. File for general freight authority. That means they can pick up 4,000-pound and 5,000-pound LTL shipments, which destroys the common carrier system. It impacts terribly on those who have big investments in terminals.

I think the key problem for the temporary is that until everybody has a wide-open licence, we need the flexibility and the judgement to issue temporary authorities. You do not get that from people who have only been doing the job for six months.

Mr. Chairman: What happens when these bills are passed and proclaimed and are the law of the land?

Mr. Morris: If they are the law of the land and administered the way I think they are intended to be or should be, then I would say within six months everybody will have a licence and you will not have to worry about licensing.

Mr. Chairman: So we are talking about an interim problem here.

Mr. Morris: A very serious interim problem.

Mr. Beer: My questions were very much in the area Mr. Laughren pursued. I would like to follow that a bit further, but I just want to be

clear on one thing. I do not want to put words in your mouth, but you would be in favour of Bill C-19, the federal bill, and Bill 88 in principle in terms of what they are doing; your concerns relate to the way in which Bill 88 is going to be administered and specifically the role of the Ontario Highway Transport Board?

Mr. Morris: Absolutely. I do not want to be said to be in favour of reregulation or against it. Certainly, the transport lawyers' association has always taken the position that it is your job to determine what is in the public interest. I privately believe the system should be dramatically simplified and I am privately in favour of the thrust of C-19 and the thrust of Bill 88.

Mr. Beer: If I follow your answer to one of Mr. Laughren's questions, the temporary licence problem which exists right now—and which you feel after September 30 will be, if anything, worse if we continue the way we are going—will also be a temporary situation until the ministry has dealt with all the applications and the new system is in place.

Mr. Morris: Yes, but it is now September 12 and we have not even had a public interest hearing in Ontario yet. Other provinces are way ahead of us.

Mr. Watkins: Quebec.

Mr. Morris: Quebec is here. Quebec has done it. More important, I think there is a fundamental philosophical problem. I do not believe that ministry personnel, registrar or anybody, should be performing what I perceive to be a quasi-judicial function in determining fitness and in determining other issues dealing with what information is going to be made available and what is not. I believe those functions should be performed by this independent tribunal with the expertise to do that job.

1110

Mr. Beer: Okay. In terms of that function and the role of the board versus having the ministry do it, is there any fundamental difference here between Ontario and, let us say, Quebec as to why the ministry ought to have a different role here, from your perspective? Is it simply because of the freedom of information that this problem exists, in your view, or is there something about the Ontario trucking scene that is dramatically different from the trucking scene in other provinces?

Mr. Morris: There is no excuse for Ontario to be different from the other provinces, but we have been odd man out ever since the federal legislation came in. Most of the provinces agreed on guidelines that would determine how they are going to deal with the public interest applications. Ontario would not agree to them. How come we have to be so different? Most of the provinces were geared up. The Maritimes are an exception. They have really been slow, but they do not have much action down there. The western provinces were geared up and off and running.

I go back. We had a system in place administratively, if you will, and it worked for 35 or 40 years. Responsible Trucking talked about continuing that same administrative process. My concern is that if we continue to have this withholding of the necessary information from the board to determine public interest, the board will not have the ability to do the ongoing monitoring job which I understand the three- to five-year interregnum is proposed to do. There is nothing fundamental about Ontario trucking that makes

it any different from any other province's that would suggest there should be a different administrative system in place.

Mr. Watkins: Can I have one more comment, please? I will deal with my own personal situation. As I said in my comments, we have an all-Ontario tank licence. I cannot get a broader authority. As I point out, what does it matter to me whether we have Bill 88? It does not matter; I am already licensed. Here is my situation.

I have an open tank authority for the province of Ontario. I have a 48-state US authority. The American one will allow me to cross at any Canadian border crossing. Ontario will not allow me to get out. I have three temporary licences I am operating on for three name customers, one out of Thunder Bay, a large corporation, and two from the Toronto area. I have to get these renewed every week. The Ontario Highway Transport Board does not have to do that, but we filed affidavits, etc., as Mr. Morris has pointed out. Via the grapevine, I hear that as of September 30 the board is going to discontinue granting those. They are going to turn it over to the ministry. My understanding is that there were 19 temporary applications to the ministry. They denied 18.

I have three customers that I will lose as of September 30, all American traffic. I have two choices. If I run within the scope of my licence, I give up the work, and I guarantee it will go to an American carrier or carriers. If I run illegally, outside the scope of my authority, then I am not a fit carrier when it comes time to make my application, because it will be on my CVOR record.

What do I do? Do I go out of business? Seriously, it represents a big portion of our sales, 20 or 30 per cent maybe. I have two choices. I run the risk of running outside the scope of my authority—and this is happening as of September 30—unless the ministry grant its, but they have not granted 18 out of 19. I have a choice.

Mr. Chairman: Have they refused or just not granted?

Mr. Watkins: Yes, refused them. They are not granting them. I have to go every week, which is a pain right now, but there was a need for the service. There is some uniqueness to it. So I lose it. Do you see why I am in favour?

Mr. Beer: I have other questions, but I will let others go on.

Mr. Chairman: Mr. Wiseman.

Ms. Kelch: May I offer a point of clarification on the one point before Mr. Wiseman asks his question? It relates to some confusion that Mr. Morris and Mr. Watkins may have entered into the discussion. It appears to me that you are describing, Mr. Watkins, a special authority rather than a temporary. There has been no change in terms of the special authority type of issue.

I think also it is very important to state that the competence and the awareness of the ministry staff in terms of evaluating the requirement for a temporary is very high and the reason we want to ensure that there are criteria is so that people in the industry are not taking advantage of the delay to operate when they will not be afforded that licence in the final instance. We are well aware of the economic considerations with which the industry is dealing, and when it comes to issuing temporaries, we believe we

are going to be fair and evenhanded.

Mr. Watkins: They are not special. The reason I was granted these licences is that these companies lease trucks. The Americans came over here and intimidated and scared these people off so bad—\$50,000 fines, etc., and they wanted a licensed carrier. They gave up their leasing company and reverted to this. There was a need.

There would be trucks in transit. They had loads in transit. That is not a special authority, that was a need. Under normal circumstances, in the old system or the present system we are under today, if I got a temporary licence, then it would be good until my permanent and you would have to file for a permanent and it was heard.

I have to go every week now, but if the board, as of September 30, stops doing that and it goes to some—I do not know if it is the right term—civil servant at the ministry, where am I at?

Mrs. Kelch: But the process does not change in terms of your having to justify why that temporary is required. You do have to justify that with the board today.

Mr. Watkins: It is already justified. That is why they give them to me every week. The bases are there. There were affidavits signed with them.

Mrs. Kelch: Yes, but that information will be made known to the ministry staff who will be making that similar type of decision.

Mr. Watkins: It is one thing to talk about it here, but from what is actually going out in the streets, they are two different things and that is not my understanding.

By the 30th, I have the choices. If I run illegally, if I run outside the scope of my licence and then it goes on my commercial vehicle operator's registration, I become an unfit carrier on my application. So what do I do? The choices are that I run that risk or I just give up the work.

I will tell you, it is all American traffic and I will guarantee you that the Americans will get all those three customers of mine. I will bet money on it.

Mr. Wiseman: This is an area we have not heard of before. I think our researcher should be making note of this and follow up. Maybe Jerry Richmond and she can get into it in a little more depth.

Mr. Chairman: I think perhaps it is a good point, Mr. Wiseman. When we come back for the clause-by-clause debate in October, we could get into this in a little more depth.

Mr. Wiseman: I thought the presentation was good. Just to make sure I am clear on this, Mr. Watkins, if you put feelers out and you get someone who is interested in your tankers and you are drawing, like the three you mentioned there, in the past, because you are a good carrier and in good standing and everything with the board—I maybe missed it, but I think I heard the time of three weeks you could probably handle that, from a temporary to a full-time, providing there are no bad points against you. Then we heard about the ones that have been in there for four months and some of the questions that were previously asked are not asked any more. Would that not discourage

you from trying to get any more of this business, like runs from here to the United States, the way things are?

Mr. Watkins: It is very discouraging and very frustrating. Just for your general interest, I filled my application out between Christmas and New Year's and somehow mine fell through the cracks. He is talking four or five months; I am talking since between Christmas and New Year's. I filed my application and it fell through the cracks some place in the ministry and here I am.

I have talked with my counsel, who is not Mr. Morris in this case, but someone from his firm, and we had a conference call dealing with, I think, a Mr. Lee. We talked about when it should be going through and when it should be gazetted. We thought it was all done, and then we wait and we wait and it had fallen through the cracks someplace. I am on the agenda in another month or so, another 20 days.

1120

Mr. Wiseman: When the minister was here, we said we would have him back again at some point. This is an important point, I think all three parties would agree. If it is just for six months or so, to keep the transport board on to do these temporary permits and everything, I do not see why it should be any big hassle if it is going to make things work smoother and, if this legislation passes, the transition go even smoother. There should not be any problem.

I am not running down any civil servants, but I do know that sometimes at the best of times they do not move as fast as some people in private business or what I think has been experienced with the board. Even though you may have a big club over their heads, it may take a long time, as it has for some of the applications, and some of the things they ask for would drive you around the bend.

Ms. Kelch: I think it is important that we have some facts on the table or at least additional information to what Mr. Morris has provided. Mr. Morris had indicated quite emphatically that he believes Responsible Trucking is the one body of information on which the decision was made in terms of who actually carries out the fitness evaluation.

I would like to reiterate or emphasize that Responsible Trucking is one of the documents and one of the processes which led to the state we are at today, but it is very important to keep in mind that the Ontario Highway Transport Board specifically has an awful lot of expertise and its experience has been developed on monitoring and implementing the current Public Commercial Vehicles Act system. That system is predicated on having the carrier determine public necessity and convenience before a quasi-judicial tribunal; the person who would like to be licensed is subject to a series of opponents in a court-like environment.

The new, reformed proposal currently before you in Bill 88 is—and several people have used the term—a reverse onus process, which means something. That means the system is going to operate very differently to the way it does today; that is, it is up to the respondent to put forward the position if a proposal for a licence is potentially detrimental to the public.

The experience of the board is very much, as I say, dealing with the current public commercial vehicle system. The board does not have nor has it

ever had the responsibility for safety. In the determination of fitness in the province, as well as in the other provinces which have already implemented reform and have implemented the Motor Vehicle Transport Act at the federal level, each has the responsibility to determine fitness from the perspective of how safely that carrier has operated.

We in the ministry have had that responsibility in terms of our enforcement practices. Mr. Morris will remember that the commercial vehicle operator's registration was not a concept which was very well developed when the Responsible Trucking report was finally tabled. Since that commercial vehicle operator's registration has become well known and well articulated as a concept, Bill 86, which has received third reading, very specifically puts in place the registration which allows the ministry to monitor the operating records of commercial carriers in the province.

It is the use of that information specifically which must be reviewed in terms of determining how safely that operator functions in Ontario. It is the evaluation of a safety record; it is not the judgement and the judicial and the quasi-judicial kind of environment the OHTB has, in the past, been in.

On the item of freedom of information—I have to beg to differ with Mr. Morris and we have had this discussion on the telephone—it is not that the ministry does not want to give the OHTB all of the potential information that it would require to make a determination as to whether a public-interest-test hearing should in fact be held. The freedom of information and protection of personal privacy legislation would apply to the board equivalently to the way it applies to myself or other ministry officials. We very specifically have to apply the rules that indicate that personal information or information of a third-party nature cannot be readily released.

We are under very explicit instructions in that piece of legislation that we are to consider that information—and in fact often need to get the third party's consent—before the release of the type of information that Mr. Morris has specified in that form.

I would very much like the commissioner of the freedom of information function to indicate to me that I can release that information. If I can do it and still abide by the rules of freedom of information and personal privacy in Ontario, I would be pleased to do it. I am waiting for the commissioner's ruling on that.

Another very important piece of information that Mr. Morris has not indicated to the committee is that the Ontario Trucking Association has challenged the process whereby the Motor Vehicle Transport Act is being administered in the province.

Therefore, it is not because these applications have "fallen between the cracks." It is because we have had to be very explicit with each of the licences that has been issued in the province to indicate to those carriers that the process is under challenge. We were in court in July, but the decision of the court has not yet been received. We do not yet know whether we can issue the licences in precisely the way we are issuing them, but we are proceeding in any event.

All of those things have taken an incredible period of time. I am not proud of the fact that we cannot issue licences as quickly as the province of Quebec can, but Quebec does not have those two constraints—a legal challenge by its trucking association and the freedom of information and protection of

personal privacy piece of legislation in the province.

The biggest delay in the process continues to be the board's evaluation of whether a public-interest-test hearing should in fact be held. When they release their decision indicating that more information is going to be required, as they ask for that information, they are now finding, with each of the individuals they are approaching, those individuals are saying: "Under my rights under freedom of information, I do not have to tell you who the 10 per cent shareholder of this company is. That is personal information."

There is a variety of those kinds of issues that the board is now facing, because even though the Statutory Powers Procedure Act is in place in the province, the Freedom of Information and Protection of Privacy Act is also very much in place. The board is going to have to live under those rules as well.

Mr. Chairman: I am absolutely certain we could have a day-long debate between Ms. Kelch and Mr. Morris on this issue, but I think in order to be fair to our next witnesses, we should not go on much longer.

Mr. Pouliot: I find it, to say the least, appalling and shocking that in view of such allegations and serious revelations made by both Mr. Morris and Mr. Watkins, the government seems, by its collective silence, to sanction this kind of unacceptable bureaucratic inertia. I, for one, am very shocked.

I find, after searching long and hard, no reason a small entrepreneur should risk losing an important percentage of his business because of the system, because of red tape. I am going to ask Mr. Watkins, is it your impression that if the OHTB were the people responsible for issuing licences, you could indeed cut through that kind of red tape?

Mr. Watkins: Yes.

Mr. Pouliot: Mr. Morris, would you acquiesce?

Mr. Morris: I totally agree.

Mr. Wiseman: I agree with Gilles. I really was surprised that we would put some businessmen out of business or put them in financial difficulties by not moving faster on this. This is our last week and then we go into clause by clause when we come back. I, for one, and I hope all members, will look real seriously and see just if they have moved and have done something to help these people who are in this position and who will be financially hurt after September 30, if something is not done.

When they have had their applications in for so long, I do not care whether it is the freedom of information or what the dickens it is, there has to be a way to move faster on this and I think the government members will agree. We cannot sit still and see people suffer like this in the trucking business when we are the ones who are writing the legislation. We are the ones who are holding it up and if these two gentlemen, who have been in it for quite a while, feel that the transport board could handle this and handle it faster if it was left in their hands, by golly, I think we should look at it.

Mr. Chairman: Perhaps the committee would agree that when we first

come back to clause by clause, the first order of business for the committee would be to have the minister here to discuss this very matter.

Mr. Beer: I think that certainly the point of the questions that I had was in trying to understand more clearly the problems from their perspective. In listening to the ministry, in terms of why some of these things are there, clearly there are some questions here and I think none of us on this committee would want to see a situation in which one of our carriers was losing business because of some bureaucratic problem. However, it is also quite clear that there are some very important changes that are taking place.

I think we have to be very clear on the structures that are being set up and I think it probably would be very useful, when we meet with the minister again, to explore some of these questions, but I am sure I speak for all my colleagues in saying that it is certainly not our intent to put Canadian or Ontario carriers out of business.

Mr. Chairman: We do understand that we do not come back until mid-October, when the September 30 deadline is far behind us.

Mr. Miller: How come this is the first time it has been raised, as I understand it? Why has it been so long?

Mr. Chairman: I cannot answer that.

Mr. Wiseman: That is why we have so many delegations coming in—

Mr. Morris: If I can comment very briefly, sir, I just would hope the committee would not solve this temporary licence issue without losing sight of the broader issue I am raising. I also do not want to be seen to be criticising individuals. Wayne Greer and Jim Lee, who are the two people directly involved with this process, are outstanding individuals, but I just fundamentally disagree with Mrs. Kelch as to what I see as a lack of expression of confidence in the transport board to do this job.

It is almost as if they have had these blinkers on for 30 years and they cannot do the job. I believe that the entire system is going to be very inefficiently administered so long as you have this bifurcation between the ministry on the one hand and the board on the other.

Ms. Kelch: Mr. Chairman, can I just ask one quick question, because I think it is important in terms of a date that has been put on the table? That is, Mr. Watkins, what evidence are you going on in terms of you actually being without authority as of September 30? Have you been told that after September 30 you do not have those temporary authorities?

Mr. Watkins: No, not officially; unofficially, though.

Ms. Kelch: Unofficially you have been told that?

Mr. Watkins: Unofficially. My understanding, and I learned this as recently as yesterday—as I say, it is hearsay—is that the board is going to discontinue dealing with the temporary or telegram authorities at the end of the month and that about 19 carriers have applied to the ministry to have their temporaries kind of reinstated or reissued again and that 18 out of 19 were denied.

Ms. Kelch: You have not been told personally that is the situation

with respect to your operation?

Mr. Watkins: No, not officially.

Mr. Pouliot: Do you know if that has been done?

Ms. Kelch: No, I do not. That is why I wanted to know from him whether he had been told that.

Mr. Watkins: There is one thing. I understand there is an awful lot of friction or bickering going on. I can be patient and wait for my licence to be heard or granted or denied or whatever. One of the concerns I have is that you fill out an application in January, and—I mean it literally—something happened; I use the term "fell through the cracks." Mine was not gazetted until May or June—June, I believe—from January. I went down between Christmas and New Year's to fill out my application and I did not get in the Gazette until June; I believe June 20.

Mr. Chairman: I think that has been pointed out to the committee. Thank you, Mr. Watkins and Mr. Morris, for appearing before the committee. You can see that you have stimulated a lot of interesting debate.

Our next presentation is from the Quebec Ministry of Transport, Gilles Gonthier. Bienvenue. If you would introduce your colleague and proceed, members have had distributed to them this brief. Oh, I am sorry, this is not Mr. Gonthier.

MINISTRY OF TRANSPORT, QUEBEC

Mr. Boulet: No. My name is Jean Boulet. I am the director of what we can call the motor carrier branch in the Ministry of Transport in Quebec. This morning I am with Gilles Gonthier, who is also from the Ministry of Transport. I will make the presentation and I will be pleased to attempt to answer the questions afterwards, the easy ones, and I will rely on Mr. Gonthier for the more difficult questions.

First, I would like to thank you very much for giving us the opportunity to make a presentation here this morning. In fact, this presentation is in response to an invitation that was made to Marc-Yvan Côté, who is the Minister of Transport in Quebec.

I have been asked to say a few words about the experience in Quebec as far as economic reform is concerned. This morning our submission gives a brief outline of the truck regulatory reform in Quebec, attempts to compare our recently enacted legislation with what we see in Bill 88, and we will also give explanations on the broad statistics on applications.

The reform in Quebec started many years ago, but more specifically the reform was really started at the federal-provincial conference of March 26, 1987, when Mr. Côté mentioned that he was ready to initiate the economic reform in Quebec on condition that some amendments were going to be made to the Motor Vehicle Transport Act, Bill C-19. One remark I want to make here also this morning is that the reform in Quebec is very much related to the reform at the federal government with C-19 and in fact it is in response to C-19.

Just to give you an overview, Bill C-19 affects 70 per cent of the trucking industry in Quebec, while our legislation affects 30 per cent. Those

are very rough figures in terms of revenue generated.

In fact, if we put aside the jurisdiction, and given the fact that the federal government still delegates the intra portion of its jurisdiction to provinces, our legislation affects, in real terms, more than half of the trucking business in Quebec. In fact, our legislation, what we call the Act respecting Truck Transportation—the acronym is quite similar to that of your legislation—was adopted in December 1987 and was implemented on January 13, 1988. That implementation excepted the specific articles that are related to the reverse onus for the intra.

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There was one specific reason that those articles relating to reverse onus for the intra were put on the back burner. We had from the Quebec trucking industry a major concern that if the Quebec government was going to introduce its reform before other provinces, and specifically Ontario, it would be much easier for a carrier from Ontario to do intratrucking in Quebec than it would be for a Quebec carrier to do intratrucking in Ontario.

We spent five months with a status quo for the intra but it became very apparent that it was extremely difficult, given the new legislation, to have the onus on the applicant. This is why, with another session of the parliamentary commission on June 8, 1988, the committee heard a number of presentations; namely, the Trucking Association of Quebec, the Canadian Manufacturers' Association representative and also one association of owner-drivers. At that time, the presentation was to the effect that all the people who were making a brief wanted the act fully implemented.

What is basically in the Act respecting Truck Transportation is that there are goals to develop a competitive and efficient trucking industry and favour the emergence of dynamic carriers. A second goal is to give primary emphasis to the users. It is also to harmonize Quebec's legislation with that of the federal government and make it compatible with those of other provinces and states and, finally, to simplify the permits.

There are main principles behind those goals. The first is equity. It is to give each carrier, whether a small or big carrier, an equal opportunity to obtain a licence. The second is efficiency, in order that the regulation would be more a guide than a series of constraints. Finally, there is responsibility. That responsibility would be at two levels. One is that truck managers are accountable for safety. Another is that they are also responsible for the success or failure of their businesses.

In trucking legislation in Quebec, we talk about permits when we talk about licences in the other jurisdictions. It is more a question of semantics. What we interpret as a permit is a licence. The legislation introduced a simplification of categories of trucking licences. It gives a definition of territories or grouping of territories. In fact, it is the original county-municipality split.

There are specifications on groups of goods, according to the standard commodity classification. In fact, this is for two reasons. From Quebec's point of view, the classification is less complex. The second reason is one you can understand, that is, we are provided with bilingual information sets of commodities.

With the Quebec legislation, we have two entry tests. The first is

fitness and the second is the public interest test with reverse onus. I want to be precise. We are using the Canadian Conference of Motor Transport Administrators' guidelines. In fact, they are embodied in the legislation.

There are transitory measures. Existing permits are valid until June 1989. There is no rewriting of licences or permits in Quebec, as such, and it is to the advantage of the carrier to have its licence under the new system because that gives it more opportunities, more territories and a broader spectrum as far as categories of goods are concerned.

There is also an evaluation process with the legislation by the Quebec Transport Commission on a year-to-year basis and one done by the minister in 1991.

I want also to make it clear that the dump truck operation is not included in this reform, what we interpret as being dump truck. In fact, there is a specific regulation in Quebec—the French name for it is réglementation sur le transport en vrac—but it has nothing to do with the bulk, in the sense that we understand it, of general trucking. It is not tank truck; it is mostly dump truck operation and also operations for carrying logs and wood products.

Why is it not included in the trucking reform? It is because in our view it is essentially a local operation and there has been a specific regulation since 1973. Before that time, it was deregulated in Quebec and the reason the regulation was introduced was because of the problems following the decline of highway construction. There was an overcapacity of those permits. In fact, it is one truck—one permit in the dump truck regulation. There has been a moratorium on licence issuing since 1977, so no one has been able to get a dump truck licence in Quebec since 1977.

Of course, there is one exception to that. I can take the case of one person from Ontario who could get what we would call at that time an extraprovincial licence under the dump truck regulation, and that would allow him to dump in Quebec. It was a one-way authorization; the Quebec carrier could not get that authority.

One remark on that subject is that it is consistent with provincial policy. As you might know, there is a statement in the memorandum of understanding that was signed between the provincial and federal ministers in 1985 that nothing in the agreement at that time could go against provincial policy. One word on that also is that there was a major survey done in the spring of 1987. Also, there was consultation with all the persons related to dump truck operation. The bottom line of that consultation and that survey was the status quo.

Of course, with the new Motor Vehicle Transport Act, since there is no distinction between carriers or types of carriage, there is a provision to do trucking operations between Quebec and Ontario, whether it is dump truck operation or general trucking.

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Just as an aside, I want to inform you that on the basis of the survey we made in 1987, there are approximately 160 permit holders from Quebec who are engaged in extraprovincial transportation with Ontario in the dump truck sector. Of this number, most are engaged in the transportation of wood.

To make a quick comparison between the legislation in Quebec and what,

as far as we can see, is the intent in Bill 88, we made a series of comparisons on page 5 of the submission I had available this morning.

The first is the certificate of competency. We understand there is a competency test which is specified in section 16 of Bill 88. We do not have anything to compare with that in the Quebec legislation. At one point in time, introducing such a test was considered. In fact, that test is based in our opinion on the model that exists already in Europe—in England, in France. This option was discarded, because from the point of view of Quebec, to have a meaningful competency test, you need huge resources, infrastructure, courses that could be addressed to those people who could pass the test.

We have a concern that a competency test as envisaged in Bill 88 could be an additional barrier to entering the industry. Of course, that test could easily be passed by representatives of large carriers, but when it comes to small carriers who have the ability and who respect the safety norms, it could be cumbersome. It could be difficult for them. They are not necessarily scholars.

As far as the fitness test is concerned—that is the second item I want to pinpoint—there is basically, in our view, the same approach in Bill 88 as in our legislation in Quebec. You can see in the handout that the fitness test in Quebec is limited to safety and insurance, while it is our interpretation that in Bill 88 there are other considerations, such as environment and fuel tax and so forth.

As far as the third item is concerned, the public interest test, in the Quebec legislation, the guidelines that were agreed to by the Canadian Conference of Motor Transport Administrators are in the legislation. One point is that a permit, or a licence if you want, could be denied after a public hearing. That is a major difference from what is in Bill 88.

As far as tariffs are concerned, there is no provision in the Quebec legislation, whereas there is a published tariff requirement in section 18 of Bill 88. In Quebec, we had two years of rate filings and the conclusion was not to put in any provision concerning rates. Experience led us to believe that only very skilled people could interpret what is a tariff, and there are all sorts of ways to go around what is published.

Item 5 is straightforward. I think we are more specific in terms of number of days in our legislation.

Item 6 is transportation intermediaries. We do not have any provision for transportation intermediaries in our legislation, while some activities are covered in section 38 of Bill 88. In Quebec, we made an analysis of freight forwarders, intermediaries, and in fact 90 per cent of the movements that are initiated by those people are extraprovincial in nature. There is no provision in the Motor Vehicle Transport Act for intermediaries. It was found to be irrelevant to put provisions in the Quebec legislation as far as intermediaries are concerned, and we are of the feeling that it would be extremely difficult to enforce.

Item 7 is sunset. there is no sunset in the Quebec legislation as far as the public interest test is concerned. Of course, there is an evaluation each year and in 1991 a major evaluation. It would require a change in the legislation to abandon the public interest test. There is one set at five years in yours and I heard this morning that there was discussion about three years; but it is still five years, I understand.

Page 6 of the summary is about statistics on trucking in Quebec, and it is as of August 27. I just want to draw to your attention the second column, which is entitled "MVTA, Part III," and the third column, entitled "ARIT (Quebec Law)." The reverse onus is enforced in Quebec since June 30.

You can appreciate from this table that close to 75 per cent of the applications have been fully processed. That is the bottom line at the right hand, 3,550 out of 4,845. One other item to specify is that 50 per cent of the applications did not require publication and were not subject to public interest tests. We can talk about ease of entry and we can also talk about a whole new driver provision, which are also in your Bill 88.

A third remark on that table is that for applications submitted to public interest tests, opposition was coming from large established carriers and out-of-province carriers in 50 per cent of the cases.

I also want to mention on that table that 1,300 oppositions under MVTA were filed between January and March, and only 26 between March and the end of June. That is "MVTA, Part II," first column. You can also note the very limited number of public hearings, three all together. I can tell you that for part II of MVTA, of the two hearings, one is United Parcel Service and the other is Federal Express. As you might be aware, for UPS the decision is to grant the authority. For Federal Express, the hearing has not been held yet. As far as "MVTA, Part III" is concerned, which is the intra, it is UPS which is scheduled to be heard, but we understand UPS is reconsidering its case.

If you want, we can go to page 7 where we have data on the number of intraprovincial and local applications gazetted by jurisdiction. It is at the stage of gazetting. In fact, it is a breakdown of line 2 of the previous table, second and third columns. It is basically what comes under Quebec legislation.

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Just to give you a few words of explanation on that table, you will see "General Commodities." In fact, it is general trucking. You could accept transportation of household or petroleum. Then you have "Restricted Groups of Goods." It is licence or application for one or several of the 40 groups that compose the classification of goods with our new legislation, and we can give you a copy of that. We have one copy and we can leave that with the committee. Then we have "Shipper Designated," which is contract carriage basically.

One point which is not reflected in that table is that all, or most, of those applications come from existing carriers. That is the knowledge we have of the industry and they are not necessarily newcomers.

You can see that 95 per cent of applications are from Quebec-based carriers, confirming the need to ease regulation for them. That can be tied to what I said to you earlier, that usually opposition would come from large carriers and sometimes from carriers from out of province.

You also can appreciate that Ontario carriers account for more than twice the number of applications from any other jurisdiction outside Quebec. I want to reiterate that those are not processed applications, but applications that have been gazetted.

On the next page, page 8, you have the same type of information, but it is for extraprovincial applications gazetted by jurisdiction. In fact, it is a

breakdown of line 2, column 1, of the first table, on which I commented earlier, and the headings are the same.

Of all applications gazetted—gazetted means they are subject to public interest—by outside Quebec carriers, there is a half and half split between Ontario carriers and carriers from all other jurisdictions including the US; in fact, it is 15 per cent from Ontario and 16 per cent altogether from all the other jurisdictions. We included that as a matter of interest. It is not the subject of the presentation this morning.

One thing you will certainly appreciate is that those are indications of carriers that will eventually, or want to provide services, but it is not on the basis of the number of applications that those people will necessarily provide the service.

The final table, which is on page 9, is a breakdown by jurisdiction of line 5 of the first table, on which I commented earlier. That includes all licences or permits, those that are subject to public interest tests, those that are subject to fitness only, owner-drivers, trip permits, temporary permits, whatever, and this is why—as a matter of information and I have to apologize for it—the provinces are not in the same sequence. In fact, it is very irrational. The French has a particular order translated into English; that is why there is no logic to it.

Just to pinpoint a few items, you will see in the first column, "Extraprovincial USA: 206." There are a lot of trip permits, ease of entry in fruit and vegetable carriage. That explains the high number.

I think those statistics speak for themselves and I think you can appreciate that Quebec trucking legislative reform is almost over. It is our interpretation that Bill 88 is compatible in many instances with Quebec-enacted legislation and that the rapid implementation of Bill 88, in our view, is required to ensure equal treatment for the Quebec trucking industry.

That is basically the presentation. I just want to apologize. We had a more extended presentation in French. We were very much relying on translators and the translation did not come and we had to do that at the last minute. I think the basics are there and we are ready to attempt to answer questions, if any.

Mr. McGuinty: Mr. Chairman, were you or the staff apprised of this problem? I think it is very unfortunate that our guests from Quebec should be required to present a synopsis of their brief in English, although I think it was very well stated. Were translation facilities not available?

Mr. Chairman: I was not aware to start with that there was a problem.

Mr. Boulet: I have to tell you that I was in communication with the committee people and they kindly offered that. I am sure it exists. We wanted to provide our own translation because sometimes with the wording there could be misinterpretation. It was our choice to present the translation, but that unfortunately did not come. That is why we did that ourselves.

Mr. Chairman: It is not evident in the presentation.

M. Pouliot: Vous me permettrez bien sûr, parce que l'occasion ne se présente pas souvent aux francophones de l'Assemblée législative de l'Ontario,

de vous souhaiter, en mon nom personnel, au nom des membres du comité et de ceux du ministère de vous souhaiter, Messieurs Boulet et Gonthier, la plus sincère et la plus chaleureuse bienvenue en nous faisant l'honneur de votre visite.

Vous savez, ce n'est pas souvent qu'une province soeur choisisse de se déplacer, même suite à notre invitation. Donc, encore une fois, nous vous souhaitons la plus chaleureuse bienvenue et nous espérons également que vous vous sentirez chez vous chez nous. Revenez nous visiter souvent.

I have a question regarding dump trucks, Mr. Boulet. You have stated in your presentation that at present 167 dump trucks operate in Ontario. Would I be right in assuming that they are mostly in the Ottawa vicinity?

Mr. Boulet: In fact, that figure is 160. That is based on a survey made last spring. The survey was a very big sampling, so we are very confident of those figures. There were 2,000 carriers interviewed of a possible 8,000. The figure we have is that 160 Quebec dump truck operators are doing business between Quebec and Ontario and 60 per cent of that figure—again, those are general figures; it is not specific to the digit—are working in the forest product, wood sector. It is not necessarily in the Quebec-Ottawa-Hull area. Those are the ones we know, of course.

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Mr. Pouliot: I have no doubt it is well monitored. Are you aware of how many truckers from Ontario would be doing the same thing in Quebec? You have 160 from Quebec doing both dump truck and forestry operation under that one licence in Ontario. How many Ontarians are doing the same thing in Quebec?

Mr. Boulet: I am sure I could eventually provide you with that. I do not have that with me this morning. As I mentioned earlier, Ontario dump truck operators could get what we called at that time an extraprovincial licence that would enable them to take a load from Ontario and dump it in Quebec. It is a one-direction authority.

Mr. Wildman: They could not come back.

Mr. Boulet: And the Quebec carrier could not get that.

Mr. Pouliot: Okay. I have one final question. In your conclusion or your summary, you made a pitch for our Bill 88 here in Ontario. But it seems that in terms of legislation, the facts will attest that in Quebec you are more advanced, you are already in the process of implementation, you have had a chance to see what your legislation has done. I am sure you were faced, before or during the initial implementation stages, with the same fears that have been expressed to our committee as to whether the US truckers were going to take you over, in fact maybe whether the Ontario truckers were going to take you over.

If you remember the fears that were expressed at your public hearings before your legislation and your real experience with the implementation of your legislation, how would you summarize it?

Mr. Boulet: What we heard from the industry was mostly what we heard from associations. We also, as an aside, heard from small carriers. In Quebec, the Quebec trucking industry, as we can see it, is taking another turn, is doing a reorientation in its activities. Of course, as an association, they

ought to represent carriers. They represent big carriers and they represent small carriers.

I am not part of the Trucking Association of Quebec, but I would assume that when you have those meetings, and those people could meet on a yearly basis, sometimes on a monthly basis, but the more time or the more money you can spend attending all those sessions, the more vocal you tend to be and the more that represents the position. The experience we had is that the small carriers that could not necessarily make their voice heard through the Quebec Trucking Association wanted that reverse onus of the intra as soon as possible.

The figures demonstrate that they got the application and the licence. The figures demonstrate also that it is the large carriers that are part of the Quebec Trucking Association as much as the small ones that oppose, and sometimes those large carriers are not necessarily born in Quebec or primarily established in Quebec. It is more the question of, as I related it to equity earlier, giving the opportunity to those small carriers to get a licence as much as the other carriers have.

Mr. Pouliot: One last question. Assume I was an operator before, I had a licence under the old legislation and I wanted to sell that licence. Since there was a moratorium or a capping of the number of licences in the marketplace, my licence was worth some money. It is called goodwill. But with the flood of applications, the value of that goodwill licence not only diminishes but is rendered pretty well meaningless in terms of return. I cannot sell my licence any more because nobody will buy it; all they have to do is to apply and they get a fresh one. Was there any compensation in your package?

Mr. Boulet: No.

Mr. Pouliot: For the people who have, let's say, a book value of perhaps \$1 million in some cases?

Mr. Boulet: No.

Mr. Pouliot: There was no compensation.

Mr. Boulet: No compensation for the goodwill; zero value. As you said, Montreal or Quebec, for instance, was worth some money, but you can appreciate that transportation is being done, whatever the regulation in place, goods have to be transported, and in Quebec there is a history of illegal trucking that could not match any other provinces, I think.

Mr. Pouliot: But I said I was the one trucking, so I was legal, I can assure you.

M. Beer: J'aimerais aussi me joindre à mon collègue, M. Pouliot, pour vous souhaiter la bienvenue aujourd'hui. Je pense que votre mémoire nous présente clairement la situation au Québec. C'est la raison pour laquelle ça soulève plusieurs questions en ce qui concerne les comparaisons entre l'Ontario et le Québec.

You heard, I believe, earlier this morning the discussion that we had with the previous witnesses with respect to the role of the Ontario Highway Transport Board. I would be interested in the role of, I believe it is the Quebec Transport Commission, in terms of this whole area vis-à-vis the ministry. Have you gone through a similar perspective of navel-gazing in terms

of who should be doing what? Is your situation similar to that set out in terms of Ontario? What was your experience in that regard?

Mr. Boulet: It is a little bit different. While you have two bodies, we have three. In fact, we have the *régie*, and the *régie de l'assurance automobile du Québec* is the registrar. It is involved. We have the Quebec Transport Commission. It is involved, and we have the ministry, which is involved but to a lesser extent. That is really the triumvirate that is looking after trucking.

I can just summarize by saying that the ministry is there more for the orientations and policy. When we talk about for-hire trucking, when we talk about the fitness and public-interest tests, the Quebec Transport Commission is basically doing that job, but there is a channel between the registrar, which is the *régie*, and the Quebec Transport Commission, because the mandate of the *régie* is really to look after safety. Since most of the fitness tests are safety oriented, it is the *régie* that gives its blessing or its okay to the Quebec Transport Commission.

The whole administrative process is undertaken by the Quebec Transport Commission, and in fact the application goes there. They are the ones who provide the forms that you might have seen. Unfortunately, I do not have them with me this morning. They are also the ones who ensure publication in one newspaper when it is a public-interest test, when gazetting is required. They are also the ones who are conducting the hearings—all that within a set of rules and deadlines that are specified in the legislation.

Mr. Beer: Was the system that you have now with the three players substantially changed by your legislation or was that what existed before, more or less?

Mr. Boulet: It had to be changed because of the emphasis on safety. Before that, the *régie*, which is the registrar, did not have any role to play in the economic regulation. They do not have a role any more in the economic regulation, but since the entry test is safety oriented, they have to be involved.

Mr. Beer: So the transport commission's role is substantially the same under the legislation today as it was prior to that legislation. Would that be fair to say?

Mr. Boulet: Yes, it is the same; a different approach, but the same.

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Mr. Beer: When you were developing your legislation, did you consider a different role for the ministry per se in relationship to the transport commission?

Mr. Boulet: Many options were considered, but as such, I do not remember the role of the commission to be profoundly modified. I must tell you that the role of the commission as such is not—I do not know if I should use these words—is not as important as it used to be. It is not in terms of what they are doing. Just look at the hearings: two hearings, three hearings.

You can appreciate that the entry test is becoming much more administrative than judicially oriented. In that respect, I cannot speak for the future, but it would not be surprising to see less involvement from the

Quebec Transport Commission and more involvement from the registrar because of the nature of the test that is involved.

Mr. Beer: So the role of the registrar, the *régie*, is the role that has expanded under the new legislation in Quebec.

Mr. Boulet: Yes, it is expanding. In fact, at the *régie* or the registrar—the director, according to federal legislation, is at the *régie*, just to make sure that you see what the setup is.

Mr. Beer: The link between the *régie* and the ministry, how does that function? To whom does the head of the *régie* report?

Mr. Boulet: In fact, it is more the information that is circulated. For each application there is a channel. That goes through the *régie* and the *régie* looks at the file, the previous record or whatever, in terms of safety. He or she says okay or not okay when we talk about la cote, the safety rating.

Mr. Beer: I just want to be clear. The *régie* is then at arm's length and independent or does the chairman or director of it report to the ministry?

Mr. Boulet: They are independent from each other and they are independent from the ministry. They report to the minister, but there is no authority relationship between the *régie* and the Quebec Transport Commission and the ministry.

Mr. Beer: Just one final question which flows from one of Mr. Pouliot's questions. With respect to the issue of reciprocity—I just want to make sure that I understand this clearly—as you developed your legislation, that was a question, an issue, but not a major one? Was there at least not major opposition on that in terms of what you were doing, or was there quite an extensive period of consultation before?

Mr. Boulet: At the last annual meeting of the Quebec Transport Commission, they had a vote on the subject of reciprocity. Their position was quite similar to the one of the Ontario Trucking Association, except that they had the experience of four or five months of a freeze because we did not have the reverse onus for the intra.

The final position was to the extent that it is possible to put reciprocity into legislation. They would, but otherwise they could—I sort of paraphrase what they said—live with that. But they would count on any pressure that could be made to have other provinces be the same as Quebec.

That is the agreement, which is the Quebec Trucking Association. In fact, with reciprocity, if we talk about that subject, there is the legal aspect. Some say yes, some say no. There is the practical aspect. How can we implement that? There is the question of definition and base carrier and whatever. Finally, the third aspect is that we have to remember that the legislation is more oriented towards the users.

It is to have transportation being made. I think that is in the federal legislation as well as in the provincial legislation. In Quebec, one major orientation was to have a match between the rules in Quebec and the rules given by the federal government, because for X number of years it was one system because of the delegation. As on the entry test there are specific rules from the federal government, it was also the position of the industry that it was not interested in a dual system, one for the intra and local and

one for the extraprovincial. It is the same industry, the same people, and they do not want to be confused with two different sets of rules.

Mr. Wiseman: Mr. Beer asked many of the questions I wanted to ask, but I just wondered, when I went to the table on page 7 and noticed— I just want to know if I am right or wrong, but I think I am right, anyway. The ones you did not gazette were people who were in good standing and asked for additional licensing under the new legislation. If they were in good standing and the registrar thought they were and so on, they were not gazetted, maybe to speed up the process. Is that true?

Mr. Boulet: I am not sure I understand your question. You said the ones who are not gazetted or the ones who are gazetted?

Mr. Wiseman: The ones who are not gazetted. Are they carriers you knew to be good carriers, responsible, never had any claims against them for running bad trucks or whatever? Then if they apply, do you not automatically gazette that?

Mr. Boulet: The ones who are not gazetted have to go through the fitness, anyway. Whether they are good or bad, they have to go through the fitness. Gazetting is only for those who are subject to the public interest test because in our legislation we have a provision; for certain commodities you require fitness only.

Mr. Wiseman: I notice since the middle of January you have put through a bushel full of applications—3,550 processed. That has to be very fast going through. I wondered by not gazetting them if that definitely would speed up the action a bit. The fitness test cannot take too long either if you put that many through. I do not know what our experience has been in Ontario, but I do not think we have been putting through 3,500 in seven or eight months.

Mr. Boulet: No. From what we hear from Quebec carriers who want to apply in Ontario, the number is very small. In fact, Quebec carriers, when they apply in Ontario, already have the licence from Quebec and cannot get the licence to complete the extraprovincial authority from Ontario.

Mr. Wiseman: You heard the discussion before you came. Would you agree that your transport board—you call it something else in Quebec, but it is basically the same, I guess, as what we have in Ontario—to be people to leave it with—you must have, to leave it in—because they have been in the business for a long time and knew a lot of those carriers probably for a number of years; that they are able to process these applications, as they have, this fast? If you were to change from them to someone else, I doubt if you would have that number coming through. Do you?

Mr. Boulet: In fact, as I said, we now have a registrar who is also playing a role. It is more like a team. It is not only the Quebec commission that is playing a role in that. I am glad to mention that if we issued those licences, it is because of them.

Mr. Wiseman: But would the registrar not pick out the obvious ones who had had a lot of problems in the past and one thing and another and just eliminate them right off the top before they ever got to the transport board?

Mr. Boulet: We hope they will pinpoint the carriers who have a history of not paying their fines and not behaving the way they should. We hope they would do that, yes.

1230

Mr. Wiseman: Just one quick question and it will be one quick one. Have you noticed the carriers, and I cannot think of the name they used, not the bulk carriers that take the loads, but the ones that take the small loads and distribute them out within Quebec—

Mr. Wildman: Less than truckload.

Mr. Wiseman: Less than truckload amounts.

Mr. Wildman: They are taking little bits. They make up a load by taking small orders.

Mr. Boulet: LTL carriers.

Mr. Wiseman: In the United States, where they have been in a little longer, we heard they are noticing a depreciation in the number of those. Have you noticed in Quebec that some of the ones are going to full loads now rather than less-than-full loads and your smaller communities not being serviced the way they were before? Have you noticed anything about service, any communities saying they are not getting the service under this new system that they were before?

Mr. Boulet: In fact, in small communities with the new legislation, this tends to be more appropriate in the sense of all those figures where we see that 95 per cent of applications gazetted, which means that they are subjected to public interest tests, are Quebec carriers; they come from Quebec. But when they were in a small area and had a very restricted licence authority, they could not serve the industry, their clients in the market of their clients. Because of the fact that in that period between January 13 and June 30 they could not possibly get an intra or local authority because there was no reverse onus yet, they were penalized by that.

Mr. Wiseman: Are they opening up distributing houses or distribution areas, or are they just taking it from point A to point B? We heard that to service an area you had to set up a distributing place—what do they call it?—within 75 miles to service that area depot.

Mr. Wildman: Depot or terminal.

Mr. Wiseman: A terminal. Are they setting up terminals? Are you finding more terminals coming out in parts of Quebec that never had them before to service the area better, or are they just taking it from Montreal to Quebec or wherever?

Mr. Boulet: Since June 30, I think it is too soon to appreciate that there are more terminals, but what we can appreciate for sure is that those small carriers will be in a position to serve their clients much better because they do not have a permit or licence which is very strict and rigid. We had an example of licences or permits in Quebec where one carrier could serve one side of the street and could not serve the other. Of course, that is the ultimate case, but that gives you the idea that some licences were extremely restrictive, not only in terms of geography, but also in terms of commodities that they could carry.

With the new legislation in Quebec, the smallest unit is not one side of the street, if I can extend the comparison, but it is what we call

municipalités régionales de comté, which is a much bigger area, or in terms of Quebec is communauté urbaine, which includes all the economic sectors of one area; the same is the case in Montreal.

Mr. Wildman: I wanted to raise some questions related to your last comment. I noticed on page 3 of your presentation, under "Characteristics," you refer to the definition of territories or groupings of territories such as regional, county or municipalities. Is Quebec divided up into regions or districts and you apply for an authority within that particular district if you are a trucker who wants to get into business?

Mr. Boulet: In fact, you can do that.

Mr. Wildman: Or you can apply for the whole province.

Mr. Boulet: All the 95 or whatever, you can apply for.

Mr. Wildman: Okay. That is what I wanted to ask you. Do you have any statistics on the number of applications that you have had? You gave us this large number of 3,550. How many of those are for the total province and how many are for smaller regions and groups of regions? Do you have any figures on that?

Mr. Boulet: Basically, on pages 7 and 8, I think we have a breakdown. When we talk about general commodities, most people would ask for the province. In fact, when they started, they were asking less, hoping they would get what they asked for, but the more it goes, the more they realize—

Mr. Wildman: They are a little leery about what they might get approved, so they were being a little conservative at the beginning?

Mr. Boulet: Yes. It is like Canadian carriers asking for the 48 states. It does not mean they will do it.

Mr. Wildman: The other question I wanted to raise was on the number of hearings, three hearings. You mention on page 5, comparing the Quebec legislation and Bill 88, that under number three, the public interest test, under the Quebec legislation a permit could be denied after a public hearing. You have only had three hearings. Could you tell me what triggers a hearing? What causes a hearing to take place?

Mr. Boulet: Once an application is gazetted, if there is no opposition, the permit is granted. If there is opposition—and that is somewhat different to what might exist in other provinces—there is not a hearing but a pre-hearing. It is the right of the opponents to be heard. It is with a limited number of commissioners from the Quebec transport commission. It is a prehearing, and it is at that pre-hearing, on the basis of what was transmitted as the opposition, the evidence, and what is said on that occasion that there is or is not a hearing. It is the receivability of the opposition, whether it is receivable or not.

Mr. Wildman: Basically, there is a smaller examination of the evidence?

Mr. Boulet: Yes.

Mr. Wildman: And that will determine whether or not there needs to be a hearing?

Mr. Boulet: That is right.

The Acting Chairman (Mr. Pouliot): I wish to thank both Mr. Boulet and Mr. Gonthier, le gouvernement du Québec.

I would kindly like to remind the members of the committee that we shall resume hearings at two o'clock on CP Trucks.

The committee recessed at 12:38 p.m.

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STANDING COMMITTEE ON RESOURCES DEVELOPMENT

ONTARIO HIGHWAY TRANSPORT BOARD AMENDMENT ACT
TRUCK TRANSPORTATION ACT

SEP 13 1980

TUESDAY, SEPTEMBER 13, 1980

Afternoon Sitting



STANDING COMMITTEE ON RESOURCES DEVELOPMENT

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Clerk: Mellor, Lynn

Clerk pro tem: Arnott, Douglas

Staff:

Drummond, Alison, Research Officer, Legislative Research Service

Witnesses:

From CP Trucks:

Sanderson, John A., Vice-President, Corporate Development

From the Ministry of Transportation:

Kelch, Margaret, Acting Deputy Minister and Assistant Deputy Minister, Safety and Regulation

Radbone, Steve, Manager, Truck Transportation Office

From the Ontario Dump Truck Owners Association:

Davis, Jacques, Executive Secretary

Dumontelle, Maurice, Executive Secretary

From the Ministry of Transportation:

McCombe, C. J., Director, Office of Legal Services

From Valley City Manufacturing Co. Ltd.:

Crockford, R. D., President and General Manager

We also sought to promote the establishment of competitive tax structures for Canadian-based motor carriers to ensure equal opportunity to compete and survive in a totally deregulated transport environment.

We sought a deregulatory phase-in period to allow Canadian carriers, Ontario-based carriers, sufficient time to adjust their operations to the increased competition, to understand the new regulations and to permit the federal and provincial governments time to plan and implement new regulations in the areas of safety and tax and other areas that we and most of the industry felt were necessary to preserve a competitive, viable Canadian-based industry.

Finally, we sought to secure the lowest possible cost structure for trucking to maintain modal competitiveness vis-à-vis airlines, railways and specialized trucking operations and to provide the lowest possible cost to our customers while still preserving some profit.

CP Trucks is, however, now opposed to Bill 88, and I will basically tell you why. As it now exists, Bill 88 would provide virtually instant and total deregulation of intraprovincial trucking operations without consideration of matters of public policy or public interest, without allowing a period of adjustment for carriers and for government alike and without ensuring that other related legislation and regulations in the area of safety and tax reform are fully in place.

We feel there are two basic flaws in Bill 88 that cause this situation. These are not major areas of the bill, but they are extremely important areas, in our view.

One is the automatic approval of all licence applications that Bill 88 includes. Under the bill, even where it is shown clearly to the Ontario Highway Transport Board's satisfaction that the public interest would clearly be damaged by granting the application, there is no provision in Bill 88 to allow the board to completely deny any application. While it does permit the OHTB to include or impose limitations in vehicle fleet, in geography and other conditions, there is no provision to prevent an applicant from re-applying immediately for one or more new licences, in whole or in part of what had just been declined or limited by the Ontario Highway Transport Board.

The second flaw, we feel, is the failure to recognize reciprocity in licensing with other jurisdictions. The automatic licensing that I have described, coupled with the inability of the board to consider any issue of reciprocity—in fact, any issue at all—puts Ontario-based carriers at a fairly serious marketing disadvantage where carriers from other jurisdictions, particularly from the US, where in many states very stringent regulatory controls exist, would have open access to the Ontario market while Ontario carriers would not be allowed to have equally open access to the US intrastate market.

Basically, these two flaws that I see in Bill 88 do not exist in Quebec, in the regulations being implemented now in that province. I understand you heard from Quebec this morning. You may wish to compare what you might have heard in these two areas in particular. While Bill 88 is an intraprovincial matter, an intraprovincial bill, I think it is very important for you to assess the impact of Bill 88 on carriers in terms of what is happening across Canada and with extraprovincial deregulation.

On January 1, 1988, I am sure you have heard many times, the federal government implemented the Motor Vehicle Transport Act, effectively deregulating interprovincial and transborder trucking. At the time, CP Trucks did express concerns, particularly over the timing of this regulatory thrust, which was approved by all provincial transport ministers, including Ontario's. Our opposition was for a number of reasons.

First of all, towards the end of last year when the bill was being approved, the schedule for the implementation of the National Safety Code for trucking had fallen seriously behind, to the point where, as the federal bill was being implemented, there was no agreement between parties as to the format for implementation date for the principal elements of the National Safety Code. This situation, under which provinces and truck operators continue to wrangle over such essential elements as drivers' hours of work, vehicle maintenance standards and enforcement standards, means effectively that there is still no uniform National Safety Code in place.

I would have have, at this point, to give some credit to Ontario in trying to reach uniform application in many of these areas and probably in being as far, or farther ahead, in implementation of the National Safety Code elements as any other province. But the difficulty comes in the fact that, as a national carrier as opposed to a local carrier, we are faced with total balkanization of the rules for hours of work, for maintenance standards and for a whole range of items in the National Safety Code, creating a great deal of uncertainty and additional cost and concern in our operations.

Second, last fall the schedule for implementation of national uniform vehicle weights and measures and dimensions for vehicles had fallen seriously behind. The federal and provincial governments had agreed to the implementation of uniform vehicle weights and dimensions which were scheduled after a three-year, safety-oriented technical study to be implemented in 1987. The objective of these standards was to improve highway safety and reduce trucking costs through establishing uniform vehicle standards across the country. The end result was to be reduced trucking expense and greater safety.

Currently, fully a year after the standards were to be implemented, there is still no agreement on common standards for extraprovincial or intraprovincial vehicles to the point where national carriers operating across a number of provinces at this point are unable to determine what kind of highway equipment to buy or what specifications should be used. In the case of our own company, we have put virtually a total moratorium on any further equipment purchases until that situation is resolved.

Third, consideration of tax credits for write-off of extraprovincial operating licences has been put on hold by the federal government. Last fall, again, prior to the federal bill being passed, the federal government did show considerable interest and concern, and perhaps sympathy, for the difficulty carriers faced in writing off the book value of licences concurrently with deregulation. In the United States, federal tax law was changed to allow carriers a tax credit to write off the value concurrently with deregulation.

Prior to January 1, a number of federal ministers discussed with the industry strategies and plans in which they were hopeful of aiding carriers in Canada, as their US counterparts had been aided.

However, immediately following passage of the Motor Vehicle Transport Act, the federal interest in the issue evaporated, leaving carriers without any recompense at all. As a result, our company wrote off in excess of \$12

million in licence and related goodwill assets in 1987 without any tax benefit, pushing the company into a significant loss situation for the first time in its 115-year history. Consideration of other federal tax inequities to permit fair competition with US-based carriers is also on hold.

Again, prior to deregulation, federal ministers showed considerable interest in the concerns of Canadian-based motor carriers: first, regarding the uneven application of the federal excise tax on diesel fuel, which is four cents a litre, which does not apply to US-based and fuel vehicles operating in Canada; second, regarding the accelerated vehicle depreciation schedules, which effectively allow US-based carriers to write off equipment in approximately one half the time of Canadian carriers, which can also be applied to transborder operations by US carriers, and in some circumstances to intra-Ontario operations as well, and third, regarding the lower general tax rate on corporate earnings in the United States which, again, would apply on Canadian operations by US carriers.

Once again, following passage of the Motor Vehicle Transport Act, government concern in these areas virtually evaporated, leaving Canadian carriers at a significant cost disadvantage with US-based carriers.

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Finally, there was uncertainty about the schedule for implementation of uniform provincial licensing regulations and entry standards. The federal and provincial governments had agreed to implement a common application form, hearing process, fitness test and entry standards. As the federal bill was being implemented, these matters were unresolved and are still unresolved, leaving a totally balkanized provincial approach to what was to be a uniform national licensing system.

The end result facing national and extraprovincial carriers is that extraprovincial and transborder truck regulation has been implemented now for going on nine months, giving no time for the federal or provincial governments to implement uniform national safety regulations; to implement uniform national vehicle standards; to implement tax reform to give Canadian carriers a level playing field; to implement common regulatory regimes for extraprovincial or transborder licensing.

The end result for us carriers is increased cost, significantly increased confusion and uncertainty and a significantly reduced ability to compete with the flood of US-based carriers coming into Canada as a result of extraprovincial deregulation.

The effect on Canadian carriers in terms of profitability is significant. I think you may have read somewhat today about Transport Route Canada, one of the larger national carriers, which today or this week has gone out of business, allegedly because of the impact of deregulation. I know that in the case of our own general freight operations, this year is not profitable. We are currently in a loss situation for the first six months, and while the fall period looks a little more promising, we are not yet certain whether our general freight operations will be profitable.

This is an industry problem. The first-quarter earnings of national carriers went to zero in 1988 from approximately a three per cent profit in the preceding year. The industry is facing tremendous uncertainty, tremendous additional costs and is very concerned about its relative competitiveness on transborder business.

Had these matters been resolved before federal deregulation, had Ontario carriers been given the opportunity to adjust to the new safety and vehicle standards, the new regulatory procedures, and been given more enabling tax regulation, perhaps the concern of CP Trucks and others about the flaws in Bill 88 would have diminished or even been totally eliminated. .

However, in looking at intraprovincial deregulation, one needs to consider the status and situation facing carriers as a result of the federal deregulation and, more particularly, the lack of completing these other areas which are so essential to maintaining safety and competitiveness.

In terms of US carriers and Bill 88, I think we could deal particularly with the increased competition which has resulted from the federal deregulation. In our own company's case, I know the less-than-truckload volumes and the truckload volumes of our major division have been affected by loss of business to major US carriers. We are talking in terms of being down to less than 20 per cent of where we were three or four years ago. In other words, 80 per cent of our business has disappeared to identifiable US-based carriers, moving that traffic particularly into Ontario and to some degree Quebec.

In common with many other Canadian carriers, the benefits of being US-based, coupled with the growing recognition of the changes free trade is bringing to our manufacturing and road transport structure, are moving CP Trucks to expand its US operating base, to employ more US drivers and to buy more US equipment for use in the transborder business. However, we are somewhat limited in this US expansion by reason of the fact that most US states possess very severe regulatory licence constraints which would take many years and much expense, many dollars, for CP Trucks to overcome. There is no guaranteed access for CP Trucks to this essential part of the US trucking market, nor will free trade grant CP Trucks that access.

Basically, Bill 88 as it is presently constituted would open the door to US-based carriers to compete in Ontario using all the competitive advantages they can muster: good service, obviously; lower tax costs; lower fuel costs; lower interest rates; and lower overall cost base. They would still have their US base protected through the rigid regulatory structure which exists in their home operating territory. They would be completely safe, from a competitive point of view, to aggressively solicit the business of an Ontario-based carrier, in the full knowledge that their home base business is not and likely never would be vulnerable to counterattack from Ontario-based carriers. And while federal immigration law forbids US employees from trucking in Ontario without Department of Employment and Immigration approval, there is no mechanism in existence to permit the federal government to enforce this immigration rule.

As a result of our considerations, we have a number of recommendations for your committee to consider with respect to this bill. We submit that there are competitive disadvantages already faced by Ontario carriers as a result of the Motor Vehicle Transport Act, and more particularly by the failure of both federal and provincial governments to meet their timetables and objectives for highway safety, regulatory uniformity and tax reform. We feel that several changes can be made in the legislation to improve this situation.

First of all, we would like to see a change in Bill 88 to subject non-Ontario-based carriers whose operations are in closely regulated jurisdictions to a more stringent entry test, similar to what Ontario-based carriers would face in their jurisdictions.

Second, we would like to see changes in Bill 88 to permit the Ontario Highway Transport Board to decline licence applications, based on the application of provincial policy guidelines and/or the detrimental effect on the public interest.

Both of these could alternatively be accommodated by the establishment, for a reasonable period, of a meaningful entry test in the bill.

We also have a couple of other recommendations that relate to some of our other concerns.

One is that we recommend the establishment of a legislative or Ministry of Treasury and Economics committee to examine provincial and federal tax disadvantages to Ontario carriers versus their US-based counterparts and to recommend corrective action.

Second, we recommend the preparation of a report for the Legislature by the Ministry of Transportation outlining the status of regulatory reform in the areas of licensing, safety and vehicle weights and measures on a province-by-province basis and recommending action that could be taken by federal or provincial governments to put in place uniform procedures, standards and practices in all jurisdictions, such a report also to include the degree of acceptance by US authorities of Ontario's standards and vice versa.

The objective of Bill 88 is to promote greater competition in the motor transport market within Ontario for the benefit of shippers and the public interest. We suggest this objective can be accomplished through an amended Bill 88 without the necessity of unnecessarily subjecting Ontario carriers to unbridled competition from US-based carriers operating from a completely different cost and tax structure and whose own home business base is protected by a strong regulatory regime.

With some minor modification, Bill 88 can provide for a period of adjustment for carriers, for shippers and, as well, for provincial and federal governments to get the changes that we described into effect, ultimately to the benefit of the shipping public and the province in terms of economical, safe motor transportation by an Ontario-based carrier industry.

That is my presentation. I thank you for the opportunity of talking to you today.

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Mr. Chairman: Thank you. I have just one question. Other members want to ask questions too.

On page 3 of your brief, you talk about the fact that the board would allow a licence even if it could be seen that the public interest would clearly be damaged by granting the application. I have heard this argument before, but I do not know what would be damaging to the public interest if a licence was granted. Could you give us an example of that?

Mr. Sanderson: If, for example, an application were to impact on an existing carrier's ability to remain profitable and perhaps to continue serving rural areas or some other area that is being served, aside from the area at which the licence is being sought, if the application were of such nature to destroy that carrier's ability to continue to serve, say, a rural

market and there was nobody else ready, willing, able or interested in providing that service, that could well be a matter of public interest and concern.

Mr. Chairman: So it might not be the main business of that carrier, but it might be a tangential or peripheral operation.

Mr. Sanderson: That is correct. Of course, it would have to be clearly shown, without any doubt, in a public hearing that, in fact, would be the result, rather than speculation that it would be the result, before the board would have an opportunity to turn it down, if that change was permitted in the act.

Currently, under the way the act is written, no matter what the results or what the consequences or what the Minister of Transportation (Mr. Fulton) might like to see as a matter of policy in the province, the board cannot turn down the application. It must approve it.

Mr. Pouliot: To say the least, I always find fascinating the parallel between proposed re-regulation or deregulation and free trade. But then again, if I consider the federal source, I think it goes hand in hand for anyone who adheres to a political philosophy. What I find certainly less appealing, but therefore more appalling and shocking, is that you can say one thing on the one hand—not yourself, but these distinguished and highly esteemed friends across—and then do the very opposite.

More important, dealing with your presentation, on page 3 you make mention of a level playing field. Yet you go on, for our benefit, to highlight things like corporate tax being more advantageous in the United States for a business such as yours, as well as the cost of vehicles, the cost of licensing, the cost of labour, the cost of gas.

Incidentally, I have a memo from our research department dated August 29, and I think you will find this most timely and relevant. The following have been converted for our benefit to Canadian litres, using Canadian dollars all across.

In Ontario, the price of a litre of diesel gas is 45.8 cents, in Quebec 51 cents, in British Columbia 44 cents and in Alberta 39 cents. In New York, it is 28 cents, in Michigan 27 cents, in California 25 cents and in Ohio 28.4 cents. Even if you had the requirement that you must post mileage and remit the provincial tax per litre used, you would still be at a substantial benefit to operate in the United States.

As a very sizeable company, you employ some 6,000 people coast to coast, you do business to the tune of some \$450 million, \$180 million of which is out of Ontario, and 40 per cent of your drivers and operators, your employees, are based in Ontario; that gives us 2,400 employees. If this package, the proposed Bill 88, becomes law, what impact do you see in terms of workforce in Ontario?

Mr. Sanderson: Certainly, I think it is part of a structural change which has already taken place. We are seeing the necessity to begin serving the transborder market with US-based employees. We spent the better part of the last two years working particularly with the federal government to try to get the cost structure evened up. We were totally unsuccessful and I think the budget of January told us that little, if anything, would be done to create a level playing field from the federal point of view.

We are really in a position now where we either give up traffic and do not attempt to compete or we move a good part of our operating base to the United States for transborder business. Now, with the same situation, where non-Ontario based or US-based carriers who operate from that same low-cost structure begin to come in to operate intra-Ontario, maintaining their US bases, we believe there will be a great deal of competitive pressure on us for intraprovincial as well as, increasingly, for interprovincial markets. The end result is that we will be less competitive. Either we move to make our whole cost base more competitive by moving even more of our operations to the US or we talk the government into taking some action or we close down and let somebody else do the work.

Mr. Pouliot: I have a second question.

You talked about \$12 million in, let's say, goodwill value you had to write off. I do not imagine a company your size, a major player, would ever have to use that \$12 million for collateral, for instance, to negotiate loans with financial institutions.

Mr. Sanderson: In the past, it has certainly been part of our asset balance sheet. We do have a fairly sizeable outstanding loan and while a good part of it this year is from our own parent, in the past we have depended on that asset balance to make those loans.

Mr. Pouliot: In other words, one would assume, I imagine rightly so, that because you have no possibility of tax shelter or tax write-offs, as was the case in the United States in the days of deregulation, this kind of intent would restrict your ability to borrow and to conduct business.

Mr. Sanderson: I think that is quite clearly the case.

Mr. Wildman: In your presentation, you basically highlighted the issue of reciprocity, which has been raised before the committee a number of times. As there are approximately 43 states which are highly regulated in the United States in intrastate trucking, how do you respond to the position which has been put forward to us by certain representatives of the shippers, such as the Canadian Manufacturers' Association and so on, that reciprocity may be an issue—although they are not sure it is; they think it may not be as important as trucking firms have indicated, but if it is an issue—which should be dealt with by regulation under the act rather than an amendment to the act?

Mr. Sanderson: I have no objection to that. It may be quite possible to do it by regulation. I would only reluctantly refer back to the situation we are in now, where with the federal act we were promised a safety regulation, uniform vehicle weights and standards regulations, National Safety Code, application process and fitness tests. All of these were promised to be implemented concurrently with the federal act; nothing ever happened and still has not.

Mr. Wildman: Basically, your experience with the federal legislation would lead you to conclude that you would prefer to have it actually in the act than to hope that regulations will be passed once the legislation is passed.

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Mr. Sanderson: I think I would lean that way, yes, but to give the ministry and the government credit, when they say they are going to do

something, by and large, they do it. Provided that we all saw what the regulation was and knew that it was going in concurrently with the bill, that would not bother me even though it could be changed subsequently. But we are looking for something that gives a period of adjustment and time for governments, as well as carriers, to adjust to the changes.

Mr. Wildman: You indicated that you would have to move more of your transborder operations to the United States in the current situation and atmosphere. You talked about the cost advantages in operating, besides the regulation and restriction in the United States.

We have had testimony before the committee that in fact when the exchange rate is taken into account, the pay rates for drivers, for instance, are comparable. In fact, there is a difference though when you count in the benefit packages that a lot of Canadian employees have as opposed to the US. Is that your experience or do you find the pay rates themselves to be substantially different?

Mr. Sanderson: There is no such thing as a pay rate in the United States. Just as in Canada, there are many regional levels of pay rates in the United States. Immediately across the border, the wages tend to be approximately the same after conversion as Canadian rates, in fact, maybe even higher. But as you move further into the south and the west the wage rates vary quite significantly and are lower than the wage rates in Ontario. It is very difficult to make direct comparisons because of the exchange level, which of course is rising up and down constantly.

Basically, what we are doing is not comparing the rates but looking at what the effective result, in terms of our tariffs to the public, is if we use a US base versus a Canadian base and the effect of all of the changes on actual operations. What we are finding is that being US-based creates a much more competitive position in the areas that we have been looking at, which are predominantly truckload, than it does to be a Canadian-based carrier.

Mr. Wildman: I may say that has been the testimony of other major trucking firms that have appeared before the committee as well. They are looking to move into the United States, if they can, in order to compete.

I would like to deal with two other issues. One, you mentioned serving rural areas or small communities. We had testimony this morning from officials from the Quebec Ministry of Transport, which of course has passed the deregulation legislation.

They indicated that there had been an influx of 3,550 licences. Now those are licences. They are not necessarily new firms—they are new licences—into the trucking industry in Quebec since deregulation. That is both extraprovincial and intraprovincial trucking. They indicated that they thought that since most of these new licences were for Quebec-based firms, that would mean better service to small communities. How do you respond to that?

Mr. Sanderson: You would have to look at the individual licence applications, but for the past three or four years the figures are that at least 90 per cent to 95 per cent of all applications to any board in Ontario have been approved. Most of those are small carriers who want to start up a token operation in some area and get the licence almost automatically without any resistance.

It is not those who cause the great disturbance and concern. It is the opportunity for major carriers with very sizable resources to come in in a major and almost disruptive way with a lower-cost base because they are based in a different country, that causes the concern. Deregulation will not really affect the number of small licences granted to small entrepreneurs who are Ontario based or Quebec based who want to expand and get into the business. That has been going on for years and will continue. What has changed is that now it is open season for anybody, particularly for very large carriers who previously had a struggle through the regulatory system to get in and now have a virtual open door.

Mr. Wildman: You are talking about trucking firms such as Roadway Express or Yellow Freight System, firms of that nature?

Mr. Sanderson: And many more. Our own company, while it is the largest in Canada, is well down the list of the top 100 carriers in North America.

Mr. Wildman: Obviously your firm operates in Quebec, so you are operating now in a deregulated situation in that province.

Mr. Sanderson: Yes.

Mr. Wildman: How has your business changed as a result of deregulation in Quebec? In answering that, perhaps you could explain the differences in the size of the industry in Quebec as opposed to Ontario.

Mr. Sanderson: I am not an authority on the Quebec market structure, but there are a great number of small regional carriers as well as a few large extraprovincial carriers. The impact on our business in Quebec this year is that because of the increasing pressure on our profitability in our general freight operations, we have closed a number of regional terminals and discontinued regional services in a good area of Quebec, or changed the structure; in other words, instead of delivering daily in an area, we are now delivering every second day. As part of the cost pressure, we are having to close a number of terminals and restrict our operations in Quebec and concentrate on the major revenue-producing areas.

Mr. Wildman: Like Montreal and Quebec?

Mr. Sanderson: Montreal, Sherbrooke, Quebec City, Trois-Rivières.

Mr. Beer: Thank you for your submission, which I think raises a number of critical points which the committee will certainly have to wrestle with.

One of the questions I was wondering about is trying to determine the impact of the federal legislation by itself, apart from Bill 88. With some of the things you indicated your company is going to be doing—for example, moving into the United States market perhaps more heavily and setting up bases there—I take it that regardless of whether we were going forward with Bill 88, you would be doing that because of the thrust of federal policy, not only in this specific area but because of the possibility of the free trade agreement.

Mr. Sanderson: I think that is true to some degree. Probably we will continue with that thrust so long as the competitive cost difference remains. What we are concerned about is that with this bill, if our base

intraprovincial operations are also open to widespread attack from large US-based carriers, again, with a lower cost centre, it could accelerate our move into the United States. It certainly will accelerate the competitive pressure on rates and on competition and will, we think, lead to a loss of business, which is going to have a negative effect on our operations. We do not really have a plan at this moment about where we go from there and how we survive that, but certainly one of the ways would be to relocate even more of our operations to a US base.

Mr. Beer: In terms of the competition you foresee coming from the United States in conjunction with Bill 88 going through largely as it is, in what form would this happen? Is it that the larger American trucking companies would open up a base in Ontario but, because of the strength of their operation in the United States, in effect their costs would be much less and they could be prepared to lose money for a time if necessary on operations here in order to grab a foothold? I am trying to see what it is that would happen in terms of how these inroads would be made.

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Mr. Sanderson: That is not too clear-cut, but I could use Roberts Express—I do not know too much about it, but a little bit about it—which is based in Akron, Ohio, and has a licence to serve Ontario transborder. They have a customer service number in Ontario, an 800 number, which allows you to reach their management and sales forces, but essentially they do not have management in Canada. They do not buy trucks in Canada. They do not maintain them nor buy parts in Canada. They do not keep their computer in Canada. Their advertising and promotion is essentially in the United States. They do not pay Canadian duty on vehicles that serve the Canadian market. They use US-based fuel. Effectively, they can be reached by telephone. They do not have a Canadian base.

With the exception of the immigration law, they could continue fully their operations within Ontario and between Ontario and other provinces without expanding that US base, provided they ensured that the drivers in the vehicles were Canadian based.

Mr. Beer: I am sorry, I just want to be clear. That is right now.

Mr. Sanderson: That is under this bill.

Mr. Beer: Okay, under the bill.

Mr. Sanderson: Right now, it would take them some time to go through the regular regulatory procedure to establish an Ontario base, but with the bill, they could do it tomorrow.

Mr. Beer: Take me the other way. If you wanted to do something similar into Ohio, what is it that Ohio does that makes that a much more expensive, if not impossible, proposition for you in the context of Bill 88?

Mr. Sanderson: In terms of our ability to do it, we can certainly serve the United States from a Canadian base in the same way that they can serve Canada from a US base. The only difference is that we would be at approximately a 15 per cent cost disadvantage to do it, coupled with the fact that we would never get licences in Ohio without buying a very expensive licence from an existing carrier or going through what would probably be a horrendous application process, without much opportunity of success. That

would be the difference.

Mr. Beer: In your recommendations on page 8, where you are talking about subjecting non-Ontario-based carriers to a more stringent entry test and so on, you want the same thing, depending on the state, that is in operation. That would be done by the Ontario Highway Transport Board.

Mr. Sanderson: Yes, basically I suggest that. I do not know how the mechanics of it would work, but if an operator from Ohio wanted to serve Ontario, and Ohio had rigid regulation, then that carrier should expect the same treatment here in Ontario that an Ontario carrier would expect if he went to Ohio. It is a straight reciprocity situation, really.

Mr. Beer: Are there any other mitigating factors which would act against American companies wanting to come up and operate here? Is what is being proposed here by both Ontario and the federal government virtually opening up everything in that respect in your view, with there being nothing in terms of a quid pro quo?

Mr. Sanderson: It is not done, to my knowledge, in terms of any trading. It is just being done as a measure that the federal minister and the provincial transport ministers have agreed to do. It is not being done as a tradeoff with the United States.

Mr. Wiseman: You purchased, I understand, a couple of small trucking firms in the Detroit area, if my pipeline is right.

Mr. Sanderson: Not Detroit.

Mr. Wiseman: Below there.

Mr. Sanderson: We have actually started five companies since March.

Mr. Wiseman: In Michigan, though, is it not?

Mr. Sanderson: Actually, it was in Illinois, Minnesota and Milwaukee.

Mr. Wiseman: My reason for asking that is I have heard some truckers say that if they were put to this 15 per cent disadvantage—I have heard as high as 20 per cent—it might be wise for them to look at moving their head offices south of the border. Canada or Ontario would lose not only maybe some of the truckers and the purchase of trucks, trailers and so on, but they would lose a lot of head office people. Do you see that as being a reality to save the company?

Mr. Sanderson: I mentioned that we have started or acquired five companies this year in the United States. We increasingly see the need for a management structure to run those five companies.

We are looking at other companies, so over time we can see the buildup of a US structure. How far that goes depends on what happens to regulation and what happens to the tax structure and what happens to other measures, but from what we can see right at the moment, is that is the direction in which we are going. Where does it end? We have been operating here for 115 years. We have seen a lot of change. We are still here, but this is pretty significant.

Mr. Wiseman: Could you purchase the trucks and the trailers on the other side and work out a leasing arrangement with them, if you took that

step, lease those trucks back to the Canadian branch and save the sales tax? You would get the benefit of depreciation in four years versus 12 and 15 years and get many of the others such as the the state taxes and everything lower. I had heard there is a possibility of doing that. Have you heard of that?

Mr. Sanderson: We leased some trailers for our Canadian operations from a US supplier this year. They are duty-paid in Canada. So I do not think they encounter that situation.

To the extent that the person who leased them to us is operating under US law and can use accelerated depreciation in the US tax structure, I am presuming that he is taking advantage of it, because certainly the cost of the trailers is way below what we would normally expect for acquiring Canadian trailers.

Mr. Wiseman: This morning we heard something that was different. I do not know whether you heard about it or not. Maybe CP is large enough that if it gets a new customer it has enough licences to cover off what it needs, but a fellow was saying this morning that he got a tanker contract or something and he asked for a special permit until he got the right licence to carry that.

Right or wrong, he thought that he had heard through the grapevine that as of the end of September they would not be honouring those—week by week going back and having them honoured again. He had the application in since Christmas. Between Christmas and New Year's, he filled it out.

Would CP be one of those 19 you mentioned that may be in that category? They suggested that perhaps the Ontario Highway Transport Board would in the interim be the people who would handle these because they know many of the carriers that are out there now. Seeing later this morning the Quebec delegation telling us that in Quebec they kept the equivalent to our transport board in place down there, I just wondered if CP were experiencing those long holdups where it asks for a special permit to carry goods to an area that maybe they had not before.

Mr. Sanderson: We have a licence application in with the ministry, which has been in for quite a considerable period and has not yet been presented. I am not sure what the reason for delay in our own case is. It is affecting our operations. It is something that we would normally anticipate resistance to getting.

I guess we moved a number of years ago to expand our licences and have been working at it rather progressively for the last three or four years across all the provinces to try to get licensing in place so that when deregulation comes, we have made as much adjustment as we can. So that has not been a particular problem for us.

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Mr. Wiseman: Do you know, because you are in every province, whether or not any of the provinces helped when they went to deregulation, or whatever you want to call it, by removing the sales tax off the vehicles or reduced their tax on the fuels? I noticed, as I went over the tax that you pay in each province, it is quite high in Ontario compared to Quebec and so on. Is it your experience that some provinces have tried to cushion that blow or level the playing field for the truckers where Ontario does not seem to want to do that?

Mr. Sanderson: I do not know that there has been any particular change. I would note that some of the provinces do have considerably lower tax rates for the trucking industry as well as other industries, but I do not know whether that has been a particular action because of deregulation.

Mr. Brown: I am interested in coming back to the reciprocity question. I am interested particularly in how you might see that provision work. I have a problem with trying to decide what jurisdiction people are applying from. Is it because their head office is in a particular state or would it be that their ownership is a particular group of individuals from a certain place? Exactly what would you think would be a fair way of deciding where someone is from? Knowing well that even your own company has five different companies in the United States, if they were to apply in Ontario, which one would you pick to make the application to the Ontario government?

Mr. Sanderson: It is a knotty question. I think what I would tend to favour is that an applicant declare essentially where he now operates—in other words, "I operate in Alberta, Montana and Washington"—and make his application. If he operates essentially from jurisdictions that are rigidly regulated, then he falls under category A and goes through a public convenience and necessity test, whereas if he comes from jurisdictions which are essentially deregulated, he goes to the fast track and proceeds through, as the bill intends, in a relatively straightforward manner.

If only a very small part of his operations were in a rigidly regulated state, then he would come under the fast-track process, but if the majority of his operations were protected by regulation, then he has that market advantage vis-à-vis Ontario-based carriers and he should come under a more restrictive regime such as he would face in his own territory or an Ontario carrier would face in his territory.

That is somewhat subjective, and it could be, and probably would be, argued before the Ontario Highway Transport Board by both sides as to which track the applicant falls under, but that is fair as well.

Mr. Brown: Essentially, you are telling me the dollar volumes of business within a state might determine where that carrier might be domiciled. I give you the for-instance then that one of your particular companies might be located in Delaware, which I believe is a state that is not regulated to much extent, anyway. That particular company which does operate primarily in Delaware then makes the application, even though there is a parent company, CP, which has a much broader base. I see tremendous problems with how you decide where somebody is from.

Mr. Sanderson: I do not know that you have to decide that in Bill 88. I think it would have to be outlined in a ministerial policy statement to the board as to how to rule in those situations.

Mr. Brown: We come back to Mr. Wildman's point, though, that it should be in the legislation, that it should be spelled out clearly. I guess that is the point Mr. Wildman is making. We often say, with a tough question: "Somebody else can decide that. We do not know the answer, but surely there is somebody smarter than us." But I am not sure there is.

Mr. Chairman: Right on.

Mr. Pouliot: We can hope.

Mr. Sanderson: I think it is a matter of having the will to set out some regulation or section that deals with that, discuss it and then implement it once it has found satisfactory acceptance by all parties.

Mr. Brown: I have another question that relates to inside Ontario. For just intra-Ontario trucking, it is my understanding that you would have to use Canadian equipment, or American equipment that you import and pay duty on but essentially it is Canadian equipment, that you must use a Canadian driver and the billings would therefore be in Canada and in Ontario. Therefore, you would pay the same corporate tax, have to use the same fuel, have to do all those things that anyone else in Ontario does. Is that incorrect?

Mr. Sanderson: Yes, it is. To operate within Ontario, and there are limitations on this, all you require is a Canadian driver. You can make one trip with US-based, nonduty-paid equipment within Ontario without paying any duty, without reporting it to anyone. The billings can be done from the United States. It is my information that you can declare those earnings from Ontario as part of your US tax base. You do not have to declare them in Ontario. The only requirement is that it be a Canadian driver, period.

Mr. Brown: Now I am more confused than ever.

Mr. Sanderson: Let's take an example. Let's say a truckload carrier from Chicago comes into Toronto. He has a load at Montreal that is going to New York City. He wants to handle something from Toronto to Montreal so that he does not run empty. He can use that truck, US fuel. He has to declare the mileage and pay provincial fuel users' tax, but he gets a US credit for that. He does not have to pay the four cents a litre federal excise tax on diesel fuel. He can use that truck without paying duty. He can put the driver in the back of the truck and let him sleep for the time it takes to go to Montreal and have a Canadian driver drive down to Montreal. Then the driver can get back out of the back of the truck, pick up the load and go back to the United States, and he has not incurred one penny of Canadian federal or provincial tax. His total operation is in the US and he does not pay duty on the equipment.

Mr. Brown: Yes, I understand that, but that is the extraprovincial legislation. That is the federal Bill C-19, not the intra-Ontario. What I am talking about is Bill 88.

Mr. Sanderson: Make the trip Toronto to Cornwall. It is the same thing.

Mr. Brown: I understand that would not be allowed.

Mr. Sanderson: Yes, it would.

Mr. Brown: My understanding—again, you can clarify this—is that any trip within Ontario must be incidental to getting back out.

Mr. Sanderson: Yes.

Mr. Brown: Using your example, if you came from Chicago—

Mr. Sanderson: I am saying Chicago to Toronto, Toronto to Cornwall and Cornwall back to the United States is permissible.

Mr. Brown: All right. I do not believe that would be described as an

incidental trip. A trip from Toronto to Windsor might be.

Mr. Sanderson: Toronto to Cornwall would be, as well.

Mr. Brown: How big a percentage is that of trucking? Again, I come back to the point that it is not really regulated under Bill 88.

Mr. Sanderson: It relates to Bill 88 because what Bill 88 does is open up that Toronto-to-Cornwall portion for any US-based carrier, with a virtual open door. Right now, it would be very difficult for him to set up that service.

Mr. Brown: But can he not do that today under Bill C-19?

Mr. Sanderson: No, not intraprovincially.

Mr. Brown: I see.

Ms. Kelch: I think part of the confusion is that what Mr. Sanderson is describing is what Mr. Brown has described as the incidental move; i.e., it is allowed for you to make an incidental move that allows you to get out of the province. That is allowed today. Correct?

Mr. Sanderson: Yes.

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Ms. Kelch: That is the point Mr. Brown is making. That is not something that is going to change or come about because Bill 88 is being put in place.

Mr. Sanderson: Other than licence-wise. He is not permitted to haul a load from Toronto to Cornwall now unless he has a licence. Under Bill 88, he will get a licence for all points in Ontario, so he will have a free hand to go anywhere.

Ms. Kelch: I think the point Mr. Brown is making is that you are making it appear as if it takes Bill 88 to make that happen. That incidental move is allowable today.

Mr. Sanderson: Provided you have a licence.

Ms. Kelch: Right.

Mr. Brown: An extra licence.

Mr. Sanderson: No, an intra licence.

Mr. Wildman: If he does not have an Ontario licence, he cannot operate between Toronto and Cornwall now.

Ms. Kelch: That was the point Mr. Sanderson was making. He made it appear as if you could.

Mr. Sanderson: No.

Ms. Kelch: On your way out.

Mr. Wiseman: I am saying under Bill 88 you could not.

Interjection: Under Bill 88 he could not, if he had his licence.

Ms. Kelch: If you are licensed.

Mr. Wiseman: I think what Mr. Brown is speaking about is that the fellow would not have a licence at the present time.

Mr. Brown: I am trying to get this straightened out. I am getting more confused by the second. Forget Bill 88 for a second. Under the present system, if I am a trucker can I make that move from Toronto to Windsor on my way out of the province if I use a Canadian driver?

Ms. Kelch: As I understand it, yes.

Mr. Sanderson: Without a licence? No.

Ms. Kelch: An extra licence.

Mr. Sanderson: No. For the local move from Toronto to Windsor, you would require a public commercial vehicle licence.

Ms. Kelch: As I understand it, and my technical expert in the back, Mr. Radbone, may like to speak to this, if you are making an incidental move on an ex licence to get out of the province, you can make that move.

Mr. Radbone: You can—

Mr. Chairman: Excuse me, Mr. Radbone, if you are going to speak, would you come to a microphone so Hansard can pick you up, please?

Mr. Radbone: You can make this incidental move under customs and immigration laws. Under the customs law, the truck can make the move. The driver, as Mr. Sanderson pointed out, has to be a Canadian mover, but you also require both in this particular example, an ex licence, because you made an international move in the first place, and an intra-Ontario licence to make the move from, say, Toronto to Windsor or Toronto to Cornwall.

Ms. Kelch: And that is a Motor Vehicle Transport Act licence?

Mr. Radbone: You would get the whole thing under the MVTA, yes, because if you are an ex carrier, then you get your intra licence under part III of MVTA, but it is under the PCV rules.

Mr. Chairman: Mr. Brown, are you okay?

Mr. Wildman: Are you clear, Mike?

Mr. Brown: No. Let some other people ask some questions to see if I can be.

Mr. Wildman: Perhaps Mr. Radbone can answer this. If under the example that was provided, and I am talking about the current situation now, a trucker from Chicago had an ex licence and was able to come into Canada and was trucking into Toronto, and then he wanted to do an incidental job between Toronto and Cornwall—using that example—because he had other goods to pick up in Cornwall to take to New York under his ex licence, and he was going to

use a Canadian driver, could a Canadian trucker object to his operating between Toronto and Cornwall because, arguing under the present rules, he could say, "Look, we have a licence for that area and we can serve that market"? Could he object and could that lead to a hearing before the Ontario Highway Transport Board before that trucker would have the permit to operate within Ontario as an incidental mover?

Mr. Radbone: He could acquire a licence through the MVTA, but subject to the rules of the Public Commercial Vehicles Act.

Mr. Wildman: Which would mean another trucker could object.

Mr. Radbone: Which means somebody else could object to his getting a licence for that move.

Mr. Wildman: Exactly, and that could lead to a hearing before the Ontario Highway Transport Board.

Mr. Radbone: Correct.

Mr. Wildman: And the highway transport board then would have to decide whether or not this service was required and needed, and if it decided so, then it could award the licence. If they decided that no, someone else could do this just as well, they could deny the licence.

Mr. Radbone: That is correct.

Mr. Wildman: With Bill 88, that whole process goes out the window, does it not?

Mr. Radbone: It is a different entry regime, based on safety rather than need.

Mr. Wildman: Public convenience and need; exactly.

Mr. Chairman: Mr. McLean, perhaps you could wrap this up.

Mr. McLean: I will be very short, as usual. I have been watching the Ontario Gazette over the last several months and it is rather interesting to see the number of applications that have been made pretty near around the world—from British Columbia, Pennsylvania, California. I enjoyed your brief because I think you have the same concerns I have with regard to this legislation.

I am curious why Gary Watkins who was here this morning is in favour of it and did not bring out the concerns you did. I am wondering why his firm, as large as it is, is in favour of allowing the American transports to come in as much as this legislation will allow. He is probably a friend of yours and I am wondering why—

Mr. Sanderson: What firm is he with?

Mr. McLean: Volume Tank Transport.

Mr. Sanderson: I do not know him and, quite frankly, I have never heard of Volume Tank Transport.

Mr. Wildman: It must be very low volume.

Mr. Sanderson: He may have his own personal reasons for wishing to have total flexibility to expand his operation and may be seeking deregulation as a way to do that, rather than through a regulatory process. I have no idea. He may be an American-based carrier, for all I know.

Mr. Chairman: Thank you very much for appearing before the committee. We will make sure that a transcript of your remarks is passed on to Mr. Watkins at Volume Tank Transport (inaudible) aware of his firm.

The next presentation is from the Ontario Dump Truck Owners Association, Jacques Davis, executive secretary, and Maurice Dumontelle, of the Sudbury Trucking Association, executive secretary. Gentlemen, welcome to the committee. I think we have met before. If you will introduce yourselves to the committee, we can proceed. The brief is being distributed.

ONTARIO DUMP TRUCK OWNERS ASSOCIATION

Mr. Davis: On my left is Maurice Dumontelle, executive secretary, the Sudbury Trucking Association. I am the regional rate agent of the Greater Northern Ontario Trucking Association. Together, we represent the Ontario Dump Truck Owners Association. I am going to read this to you rather than speak on it.

Honoured members of the standing committee on resources development, we, delegates for the Ontario Dump Truck Owners Association, come here today to address issues considered important for all dump trucking in Ontario.

First, we convey our appreciation to the committee for allowing us audience to hear our concerns in regard to the proposed Bill 87, An Act to amend the Ontario Highway Transport Board Act, and Bill 88, An Act to regulate Truck Transportation. Specifically, our interests lie with the part of Ontario's trucking industry that involves the class R public commercial vehicle section, which most greatly involves the covering of the haulage of road construction materials.

Second, please be informed that we applaud the efforts and successes of the provincial government with its passing of Bill 86, An Act to amend the Highway Traffic Act, expected to be an effective system for registering all of Ontario's commercial vehicle operators, better known as the CVOR. Ontario should now have a system for policing its trucking industry with intentions to have all truckers treated fairly and equally in regard to licence obligations.

Now it will happen, with the use of modern technology, that the Ministry of Transportation will not only be able to fully police all commercial vehicles in Ontario, but the general public will also have available to it accurate information on the availability of transportation services at any given point. As for the dump truck industry, it will now be the case that other dump truckers, those presently without PCV licences who participate in non-for-hire services, will now also be required to register with the ministry.

We also commend the efforts finally undertaken by the ministry with its implementation of the new measures which call for responsibility on the part of shippers for gross vehicle weight overloads. We believe that such courageous action on the part of the ministry will undoubtedly serve to alleviate a large quantity of the overloading problem.

Even those problems in regard to actual weight overloading laws, at times considered confusing and unjust, now stand a better chance of being

resolved, since most who are involved and who benefit from the hauling of aggregate materials now have a co-operative interest to keep dump trucks loaded within the legal limits.

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As for the accompanying proposed legislation, we see that deregulation of Ontario's trucking industry is the ultimate purpose of the two bills, Bill 87 and Bill 88, being debated in the Legislature. Those advocating the proposed new system do so because they believe that the regulating of the industry continues the reduction of competitive participation and serves to cause decreased supply. It is argued that higher costs result from the eventual misallocation of resources. For the trucking industry, that likely translates into empty backhauls.

We ask the committee to make note and acknowledge that dump truckers are a different breed of trucker than those of the more popularized, province-wide, tractor-trailer, long-distance hauler. Dump trucking is a distinct part of Ontario's trucking industry with special needs for explicit attention. Contrasting with the long-distance, highway-travelling trucker who is most often seen to spend long periods of time absent from home, the dump trucker has a shorter distance hauling business.

Furthermore, many operators of long-distance haulers enjoy better economic advantages due to economies of scale since most form part of the larger, more prosperous, multiple-truck licensees. Dump truckers do not get to enjoy many opportunities for having business losses absorbed through tax breaks or any other similar means. Whenever an aggregate hauler loses on a venture that he takes on, the money lost usually comes right out of his take-home pay.

Moreover, dump trucking is identifiable as a more self-governing type of operation than most other kinds of trucking. Most are a one-man, one-truck business entity. Most are usually dependent upon a particular employer for a particular work season.

We believe that success is quite possible for the Ontario government's endeavours to have the price of trucking service to consumers reduced. However, detrimental, adverse effects to the dump truck industry are expected. We see that a major component of the plan for deregulating the trucking industry is to provide an increase of backhauling opportunities to truckers, thus enabling the lowering of trucking rates.

Such would undoubtedly help to allow the plan to succeed, since a more cost-effective service would likely result. But for dump trucking no such benefit exists. There cannot occur any really effective alternative method provided to the present operating conditions so that dump truckers can take any further advantage of backhauling. Such would not be available in order to take the pressures off the dump-trucking rates.

As we said before, dump trucking has the characteristics of a more locally situated, home-based industry than highway trucking. Participants in dump trucking often fall within the confines of a family business that most usually involves all the members. The largest bulk of dump truckers or class R public commercial vehicle operators consist of single truck owner-operators with a smaller additional group of two to three truck owner-operators. All have a high degree of competitive nature and view their operations as ongoing, highly competitive businesses whose industry is already a lean, efficient and

wholly cost-effective economic system.

Dump truckers' abilities to keep themselves in operation amidst the alarming, already reported high cost of operation suggest great endurance on their part to keep in business. Comparison of the statistics for bankruptcies of dump truck businesses with those of other parts of Ontario's trucking industry should indicate that few dump truckers fail, and should also give credence to the claims of the industry's present viability.

The present regulated dump truck system's laws, although admittedly indeed a great deal antiquated, have succeeded to serve to protect a large part of the viability of dump trucking for many years. Up until recent developments, the Ontario Highway Transport Board, with its limitations to the provisions of the Public Commercial Vehicles Act, has been able to provide some measure of economic security to licensed dump truckers already within the system.

Although still having to face the same hardships as any business enterprise, including cost of operation, licence fees to pay and coping with limited work availability, dump truckers have at least been assured that there is legislated law in effect intended to protect their part of Ontario's trucking from the ill effects of overly excessive competition.

We maintain that deregulation of dump trucking in Ontario would lead to chaos. Rather than the desired positive effects expected by dedicated advocates of free enterprise, the very opposite would likely occur. Excessive competition would result, leading to predatory pricing. Dump trucking rates would eventually prove to be noncompensatory in almost all heavily populated areas, while in rural communities, poorer service would develop, at excessively high trucking rates. More unsafe trucking would result as instability of employment would undoubtedly take effect and encourage dump truckers to spend much more time operating when work was available and much less time servicing their equipment. Technological development would also be impeded since an economically suffering industry would then provide much-reduced capital investment motives.

With the Public Commercial Vehicles Act's structure and the Ontario Highway Transport Board members' right to deny licence issuing on the basis of an applicant's inability to prove a public need for the extra services, Ontario's dump trucking industry has been spared saturation. Although contrary to arguments made by those advocating the free enterprise business concept of deregulation, which may or may not be good for the remainder of Ontario's total trucking industry, the regulating of the dump truck industry has at least proved to have served in the efforts for stabilizing Ontario's economy.

In fact, rather than being a burden on Ontario's economic recovery, the dump truck industry has proven to be a boon. The spinoff industry has done well. New and old truck and truck parts sales companies have found it a golden well of opportunity for business success. Rubber tire distributors continue to show strong sales records, and mechanical repair and service businesses have also been doing very well. Ontario's low level of unemployment is undoubtedly accredited to a large degree to this province's dump trucking. Literally thousands of people are directly and indirectly employed in Ontario because of an already existing, well-balanced dump truck industry.

A great concern that exists with the new proposed legislation is found within Bill 88, subsection 9(1) through to subsection 9(8), with particular attention to clause 9(3)(b), which includes clause 7(4)(b).

The intent of that section, as we see it, serves to reverse the onus on to objectors to prove a public interest that calls for not issuing an applied-for authority to operate. The present conditions of today's laws calls for an applicant to show with his application for an authority to operate a public interest of a need for an additional authority.

We maintain that it has always been much easier for an applicant to discredit an objector's argument against his successful application for an authority by showing a public interest for the granting of an additional authority by merely having a potential employer verify that there would be ample work made available to him in the event of his applied-for authorization being granted than it is for the objector to succeed in having the application barred.

Conversely, with the new proposed regulation, it would be up to an objector to show cause that there is a public interest not to allow the granting of the applied-for authority. Consequently, the objection to the granting of the authorization would only be successful if the objector could produce evidence that the granting of the authorization would serve to contribute greatly to ill effect against the general public. Presumably, the only way that would be possible would be to prove that any ill effect to the trucking industry would, in turn, prove that there would result in an ill effect to the public interest.

To convince the OHTB of the potential for ill effect occurring to the trucking industry under the new proposed laws would require testimony from a multitude of possible employers, who would, in turn, have to argue that there was no more work available and that they believed there were already too many trucks available to them. The whole concept is ludicrous.

The only other way for any possible success at barring applications for authorization by concerned participants of the dump truck industry would require great numbers of them to continuously protest the granting of the additional authorization. That is, of course, also presuming that by protesting, certain conditions could be made to occur that would cause the provincial government to direct the OHTB not to grant authorizations.

Such conditions would undoubtedly contribute to excessive litigation costs to be suffered by all concerned, with near-impossible odds placed against those citizens wishing to protect their businesses and livelihoods from the expected rampant entry of new authorizations.

Today, entry can be gained in spite of existing legal constraints, so there does exist a competitive injection. There is no moratorium, nor is there any freezing of authorizations in Ontario. In the past, when Ontario's dump truck industry was made to suffer deregulation, chaos did occur. Competition intensified to the extent that noncompensatory rates became prevalent. The result was the eventual account of excessive numbers of bankruptcies in the business.

Trucking rates for the for-hire dump trucks vary tremendously throughout Ontario. In the southern parts of the province, where the rates are the lowest, competition is found to be at its greatest. Even if also regulated in that area through the Public Commercial Vehicles Act, there exists more density of dump trucks licensed in the southern part than in almost any other part of the province; there is more work available for dump trucks there, though, for the most part of the work season. Having an earlier summer, southern truckers can begin their yearly operations earlier in the year and

thus, have a nature-blessed economic advantage over dump truckers in most other parts of Ontario, especially over dump truckers in northern Ontario.

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When southern dump truckers travel north during northern peak seasons to search for better paying work, northern Ontario's regional economic stability for dump truckers becomes affected by temporary downward pressure forced on to their trucking rates due to the temporary addition of competitors. By the fact that southern trucks are available to northern Ontario contractors, who would otherwise be forced to negotiate with local truckers for fair, equitable, compensatory trucking rates, the contractors are placed at unfair advantage over northern dump truckers.

The threat of using southern truckers who are always willing to work for less, being able to do so due to their ability to take advantage of the elongated work season enjoyed back in their home region, places northern Ontario dump truckers' businesses at jeopardy.

Lately in northern Ontario, dump truckers have been dealing with an increasing intrusion of out-of-region dump truckers who have travelled to the northern area to do their work at lower pay. As a consequence, the dump truck for-hire rate structure in northern Ontario has suffered alarming alterations.

Much good can be said for a highly competitive industry, and the northern Ontario dump truck industry has proven itself as not being shy of competition. Predatory pricing, however, is quite another matter. Allowing southern Ontario contractors the privilege of bringing trucks licensed to operate elsewhere and allowing them the use of the short time availability of these additional trucks against the northern truckers when negotiating dump truck rates, to our minds is not fair.

Northern Ontario dump truckers have recognizable, unique circumstances to deal with. Costs of operations are higher, repair parts are more expensive, fuel costs are greater and price of equipment all call for more money. The dump truck season is shorter in northern Ontario, involving much less time than what is realized in southern Ontario for dump truckers to earn revenue. Higher trucking rates are obviously necessary for northern Ontario regional dump trucking. The economic conditions of the area, which is the need for dump truck service and the continued availability of that service, are the only real circumstances which should determine what those trucking rates should be.

We now understand that Ontario dump truckers will be denied much of the benefit intended for the remaining part of Ontario's trucking industry. Reciprocal treatment with out-of-province trucking will not occur for Ontario dump truckers.

Quebec has succeeded in adopting deregulation laws for its trucking industry, and reciprocal treatment between Ontario and that province will now be possible. As it is with present-day conditions and as it will likely be with the proposed deregulation bill, out-of-province operators will be allowed licences to operate in Ontario. There will be no reciprocal treatment for Ontario's dump truckers, though.

The Quebec government has allowed a present-day freeze on licence issuing for either temporary or permanent and for either intraprovincial or extraprovincial dump trucking to continue. Therefore, the situation is now and is intended to remain that dump truckers of Quebec are entitled to find work

in Ontario but Ontario's dump truckers are legislatively denied access to work in Quebec.

Although not a neighbour of Ontario, it is quite relevant to note that New Brunswick now considers it important to give special consideration to its dump truck industry. They are now presently discussing the possibility of regional protection through regional licensing of that province's dump trucks.

Manitoba, another neighbour of Ontario, is also presently deciding upon a method for protecting their dump truckers from the ill effects of the national campaign for deregulating the trucking industry. Reciprocal treatment will not likely be available for Ontario's dump truckers from that province, either.

We ask the committee to support our cause and we ask the provincial government to grant exempt favour to the dump truck industry when it legislates new laws which will serve to deregulate Ontario's trucking industry. Often, at other times, for other industries and for other reasons, special recognition and consideration have in the past been granted due to evident disparities, and we merely ask for a similar treatment.

The Quebec-Ontario dump truck issue, most prevalent in the Ottawa-Hull area, the Manitoba-Ontario situation, the already existing excessive competitive conditions in southern Ontario and the distinctive problems endured by northern Ontario dump truckers call for total exemption from the effects of the new proposed laws.

To further give credence to our plea for special consideration, we point out that for northern Ontario, regional disparities have already been recognized. The price of licence plates for northern pickup trucks and automobiles have been lowered. Many special concessions and grants have been made available to northern business, and amendments to federal UIC legislation provide less stringent qualification requirements for benefits for northern dwellers. There are even special considerations that have been granted to northern workers' compensation recipients for special medical attention that is normally only available in southern Ontario.

It is not a new idea to recognize disparities, but rather it is something that requires fortitude on the part of the government to identify it and then courage to serve it and allow it distinctive consideration. We believe Ontario's present-day government qualifies for such action.

If that is not the case, then we ask that the provincial government agree to a moratorium of dump truck licences for the next five years. This we ask for to allow the industry to better prepare itself for the expected adversities of deregulation.

The provincial government and its Ministry of Transportation have not yet examined fully enough the dump truck part of Ontario's trucking industry, nor have the criteria been established to serve to alter and affect it. The ministry is presently studying the various types of equipment involved in dump trucking, such as straight trucks and truck-trailer combinations, in order to find acceptable means to further regulate payload capacities of dump trucking in the interest of road building and repair costs endured by specific administrations.

There is much to be considered and much to be understood by the provincial government before it decides to effect drastic changes to Ontario's

dump truck industry. We ask that the government give credence and accreditation to our concerns before making its decision.

We thank the committee for listening to our concerns today.

Mr. Chairman: Thank you, Mr. Davis. Have many licences in dump trucks been sold, just the way they have been in other areas of trucking?

Mr. Davis: Pardon me?

Mr. Chairman: Have the licences been sold the way they have been in other parts of the trucking industry? Can you buy a licence and sell a licence?

Mr. Davis: Through the government, yes. There have been other ways.

Mr. Dumontelle: Sometimes people sell the vehicle with a licence.

Mr. Chairman: That is what I meant.

Mr. Dumontelle: But there has been quite a bit of difficulty when they come to change the licence. If there has been any expiration of exercising the licence, usually they lose the licence and it is easier for them to apply for a new licence under the PCV act.

Mr. Chairman: The reason I ask that is that other truckers have been complaining that when this new legislation takes place, the value of those licences will drop considerably. For example, CP said it would go from \$12 million to zero.

Mr. Dumontelle: That is right. The licences will drop in value.

Mr. Chairman: Right, so when you talk about a five-year moratorium on licences, would you still have them sold during that five-year moratorium?

Mr. Dumontelle: We feel that the government should take a proper look at the dump truck industry. We were before the Rapoport inquiry, the ministerial inquiry, and now we are before you today. We feel that, actually, the government, in presenting these new bills, has not looked into the dump truck industry, because it is different than long-haul truckers. It is an operation that usually is 30 miles return. We are not talking about haulbacks and everything else.

Mr. Davis: The transferring of licences from one operator to another, I believe, should always be done—from the opinions of the people whom I represent, the idea would be to have the provincial government in control of that, so that you could not sell your licence to someone else.

Mr. Chairman: I think that was probably true anyway, but it was called goodwill. Is that not how they did it?

Ms. Kelch: I guess I am not entirely sure of the question you are asking, because the response I seem to hear is that these gentlemen indicate that a transfer of a licence should still be authorized by the ministry. Is that correct?

Mr. Davis: Yes.

Ms. Kelch: Whereas I think the question you are asking has to do

with whether these individuals want to continue to be able to sell their licences through a moratorium. Is that correct?

Mr. Chairman: Right, while a moratorium is in place that they have asked for.

Mr. Dumontelle: At other meetings, we also recommended that no value be placed on a PCV class R. That was not looked upon very favourably, but that was our recommendation.

Mr. Pouliot: Thank you, Mr. Dumontelle. I am joining others in thanking you for your excellent presentation. Again, I candidly point to page 8 of your presentation, where you were in a very generous mood. You talked in terms "fortitude on the part of a government to identify it and then courage to serve it by allowing it distinctive consideration. We believe that Ontario's present day government qualifies for such action."

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I know you have thought very deeply about this kind of phraseology, but what is surprising is that the other pages of the remaining eight or nine pages of your presentation echo a different tone. You are very disturbed. You are very concerned about being plainly put out of business. You feel your operation, your business endeavours are more or less family affairs or small dump truck operators—one trucker, two or three. There are not too many big players in dump trucking. Right?

Mr. Dumontelle: No there are not.

Mr. Pouliot: It is my understanding from listening to the advice of the ministry that you are treated differently under the proposed legislation and that some of the fears that you have expressed here need not be, and that it is not the intention of the government to deregulate the dump truck industry in a significant way. Things will not change as much as it will vis-à-vis trucking in general. Do you have a different feeling? Do you feel you will be really affected by deregulation?

Mr. Dumontelle: You are bringing up something I am not familiar with—this rule that you are speaking of. We were going to be treated as a separate entity. I have not read anything on that at this date.

Mr. Davis: The only thing is what we made special attention to and that is reverse onus. Regardless of whatever they may want to say about the dump truck industry, there will be regional licences as it is now continuing. But if reverse onus will not allow the Ontario Highway Transport Board to not accept applications for licences due to arguments that there is no public need—insufficient argument for a public need—having a reverse onus will take this right away from the OHTB to deny these licences from being granted. Therefore, consequently, more licences will be granted. You need only have to apply.

Mr. Pouliot: What you are saying is the OHTB will have as much clout as Mickey Mouse.

Mr. Davis: Exactly.

Mr. Pouliot: That is what you are saying.

Mr. Davis: That is what I am saying.

Mr. Pouliot: I want to be very clear about this. Right now if I apply for a licence, I have to prove public necessity, public convenience. Under what you call "reverse onus," I can apply for a licence as long as I satisfy the safety element. There is no mechanism in place to deny me a licence except if a pariah, a Judas—no, I am talking about reverse onus, that is fair game—can prove significantly that I will hurt public convenience and necessity, which is almost impossible to do.

Mr. Davis: Exactly.

Mr. Pouliot: Even if he were able to do this, what you are saying is that the OHTB does not have jurisdiction to deny me a licence.

Mr. Dumontelle: Right.

Mr. Pouliot: Finally, I am clear. Thank you very much. I agree with you 100 per cent.

Ms. Kelch: Could I offer a point of information?

Mr. Chairman: This is not a debate with Mr. Pouliot, is it?

Ms. Kelch: No. I would never propose to get into a debate with Mr. Pouliot. It is, however, perhaps interesting for the committee to be aware of what is in clause 4(6)(d) of Bill 88. You are quite right, Mr. Dumontelle, in terms of the general process being the same for dump truck operators. However, there is in the section to which I refer the ability for the board to impose complete limitations in certain areas. One of those areas is the carriage of road construction materials. It was to deal with, at least partially, the situation you have described that we retained that fleet restriction possibility for dump truck operators.

Mr. Davis: When you say "fleet restriction," what do you mean by that? Do you mean the operator will be restricted to so many licences? Or do you mean there will be only so many licences issued in the region?

Ms. Kelch: I do not mean the latter, because that would take a very separate piece of legislation.

Mr. Davis: Then it really does not mean anything to our industry at all, does it? Most of our operators have one licence, or they may have two, but very seldom do they have as many as three. So fleet restriction means very little to them, does it not?

Ms. Kelch: It obviously does not deal entirely with the situation, because you are quite right that we could not restrict to zero, but it does allow the board to restrict to a minimal number.

Mr. Davis: But when you consider the existing industry as it is today, with many thousands of licensed operators who are operating in Ontario, and the fact that there are many more dump truckers in Ontario who are not licensed and who are just waiting for an opportunity to get a licence, is it not true that now they will also be entitled to get licences to operate in Ontario?

Ms. Kelch: What I do not know is the comment you have made in terms of how many potential dump truck operators there are out there waiting for their licences—

Mr. Davis: They are not potential; they are there, but they have just been operating without a licence for years and the Ministry of Transportation has not been able to get them off the road.

Ms. Kelch: I cannot accept that as a given. We have had the discussion here at the committee in the past in terms of enforcement practices. In fact, these fine gentlemen have been in the same boardroom with me several times talking about enforcement and some of the concerns they have in terms of the level of enforcement. I appreciate that yes, there are some folks perhaps operating out there who are not licensed, but I cannot assume—

Mr. Davis: I said they need to be licensed. You say that these people are operating illegally. Under the present system, they do not need to be licensed. They may haul their own equipment or their own material doing their own work; so they do not have to have a PCV licence. All of a sudden, it is going to be very easy for them to get one. They do not have to prove a necessity; they just get one. You pay your dollar or however much money it is going to cost and go get a licence without having to show that there is a need for it; you just make sure that your equipment is safe. But they need to be safe today.

Mr. Chairman: You say they do that now. What is it you are worrying about? That they will branch out and compete with you?

Mr. Davis: The fact that there was a limited amount of PCVs served to keep a limit on the amount of trucks participating in the for-hire industry.

Mr. Chairman: I understand.

Mr. Pouliot: Just one last comment. As we get the benefits of the testimony, I am finding out not only do we not have a reciprocal arrangement with the 43 states that are still regulated to a large degree, we do not even have—and this testimony here will attest to that—a reciprocal arrangement with the sister provinces of Manitoba and Quebec. This is worse than free trade. This is a complete giveaway.

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Mr. Dumontelle: Last year we had a trucker out of Ottawa—his name was Poirier—who proceeded into Quebec to deliver a load 33 miles within the province. He was stopped by the police department. His driver was put in jail. His truck was impounded and until he paid \$500 to the police department to release his driver, it was not done. When a trucker from Quebec ventures into Ontario, he is just given a subpoena. Whether he comes back or not, that is something else.

Mr. McGuinty: I will ask for clarification of that situation in a moment as well. As a resident of the Ottawa Valley who farmed in Quebec for many years, I think I can attest to the kind of thing you allude to.

First of all, thank you for your presentation, which is not only very well worded but supplemented in a very convincing manner by the concern you express.

We have heard a great deal from other presenters about the implications of deregulation regarding competition from the United States deliverers. I presume that this is not a concern of yours.

Mr. Davis: Not at all.

Mr. McGuinty: It is all within the province.

Mr. Davis: We do not really see much.

Mr. McGuinty: You say on page 4, "Excessive competition would result, leading to predatory pricing." That is a damned good phrase; I never heard it before—predatory pricing. Very well said. "Dump trucking rights would eventually prove to be noncompensatory in most all heavily populated areas while in rural communities poorer service would develop and at excessively high trucking rates."

The argument has been posed by those who have come to us endorsing Bill 88 in its present form, with reference mainly to the long-distance hauling, which is a different ball of wax than your industry, but I think it would apply equally to yours. The argument is that back to 1928 we had regulations established which served the purpose at that time, partly to ensure services to outlying areas of the province and partly, in some ways, to restrict competition, but that act clearly is out of date given the situation of the moment.

The argument is that really the trucking industry, like any other industry in a free market economy, should be subject to the free play of market forces. We are not talking about eggs or milk now; we are talking about trucking. There are exceptions to every rule. The idea is that competition of this kind that does influence pricing does redound to the benefit of the consumer; it could be the consumer of gravel, the consumer of electrical goods or what have you. What do you say to that argument?

Mr. Davis: The only thing I would like to point out is that predatory pricing does exist.

Mr. McGuinty: Sure.

Mr. Davis: A good example occurred this summer when a large portion of our work in the Sudbury area was lost to southern Ontario truckers. A particular job that normally would have demanded a much better rate lost as much as 18 per cent because of the availability of truckers from another area who normally work for a lower rate in their area, because again of what was mentioned in the brief, an elongated work season.

Truckers in our part of Ontario, which is the Sudbury area, do not look forward to work getting started much before May. They have already been working here for quite a long time in the Toronto area. They get some bucks in their pocket and they feel a little bit more secure. They may even start expanding or start looking for better pay. So they look towards our area where there are higher rates. They go there and work.

It is understandable that the contractor does not like to pay that rate. He wants to pay the same rate as they are paying down here. He uses the availability of those southern truckers when he is negotiating the rates with the Sudbury-area truckers when those rates come up for negotiation, usually around May or June. So we are placed in that position.

You say that dump trucking should be competitive. It is very competitive. There is no way that you could say it is not. But we have seasonal conditions that long-distance haulers do not have to face. We can only work certain months of the year and that is it. However, those truckers must eat all year round.

Mr. McGuinty: That helps.

Mr. Davis: Right.

Mr. McGuinty: In other words, as I understand it, our long-distance haulers here, it is said to us, would be at a competitive disadvantage—I think one gentleman said 18 per cent earlier today—if they had to compete with American competitors. In a sense you are in the same position vis-à-vis southern dump truckers.

Mr. Davis: Yes. On a smaller scale, it is a very similar situation.

Mr. McGuinty: Your point is that, just as in other areas we have recognized the particular needs of the northern part of our province, this is a particular industry that needs that consideration.

Mr. Davis: Yes.

Mr. McGuinty: You have tantalized me with this lone reference to the situation in the Ottawa-Hull area. Do you have anybody in your association from the residential part of Ontario, like the Ottawa Valley?

Mr. Davis: Yes, the Greater Ottawa Trucking Association.

Mr. McGuinty: It is not listed here.

Mr. Dumontelle: It is listed on the first page.

Mr. McGuinty: Oh, I am sorry. Could you elaborate for my colleagues who might not understand? Mr. Dumontelle gave a very good illustration of the kind of thing that is going on, very unfairly, not only in the realm of trucking but in other aspects of labour, in areas bordering on Quebec. I do not say that of the Quebec situation in a critical vein, but I think it is very unfair. Could you elaborate on that, Mr. Dumontelle, please?

Mr. Dumontelle: I was speaking to Leo Sauvé, who is the secretary of the Greater Ottawa Trucking Association. It has been about six years that he has been making representations. There have been ministerial inquiries, the Rapoport inquiry, exactly about this same problem and no one has taken any trouble to look at it and say, "Hey, we should be doing something to this."

A trucker from Quebec can drive into Ottawa and dump his load. He does not pay any taxes, he does not pay anything; he just goes back home, no problem. As soon as an Ontario trucker heads into Quebec to dump a load, it all comes about; he gets ticketed, his truck is impounded.

This is something we brought out in 1971. It was a problem then and it is still a problem today. But it is up to the government to see that some changes are made.

Mr. Davis: The provincial government of Quebec has no intention of changing this situation. L'Association nationale des camionneurs artisans du

Québec has a lot of political influence in Quebec. They have convinced their government not to make any changes that will affect their industry. Things are going to remain the same for Quebec dump truckers.

However, dump truckers are competitive and they move around. That is part of their industry, part of their business. You will often see Sudbury truckers move to the Wawa area to go to work for a short time. You will see northern truckers move to the southern areas. A lot of our Sudbury-area truckers will come here in the wintertime to do the snow removal around Toronto. Special arrangements have been made with the Ministry of Transportation to allow this sort of thing.

But when you do not get reciprocal treatment, then it is not fair. It is a little hard to take when you see somebody with Quebec licences coming over here and doing your work. Even if he takes his licences off, because of a particular advantage he may have, and puts Ontario licences on, you know he is a Quebec trucker. You know where he comes from. You know who he is and where he is coming from, and you know where his money is going.

Mr. Miller: I want to ask a supplementary. Under the new bill that has just been passed by the federal government, is it not the purpose of the bill to give access or fair treatment within provinces?

Mr. Davis: Which bill?

Mr. Miller: The new bill that was just passed at the beginning of 1988 at the federal level—deregulation.

Mr. Wildman: Bill C-19..

Mr. Davis: That is not intra. We do not see anything there to help intra trucking.

Mr. Miller: It has already been put in place. We just had the Quebec ministry representatives this morning. They were indicating that they had put their deregulation in place, and it seemed to be working. I wonder if there is going to be any change. This has been happening in the past. Can we look to any change in the future so that we will get better access and better treatment between provinces?

Mr. Davis: Not for intra trucking and not for the dump truck industry.

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Mr. Chairman: On Bill C-19, perhaps Ms. Kelch could help us out here.

Ms. Kelch: I think Mr. Wildman is holding up the summary of the Quebec presentation. They were quite explicit this morning in indicating that there is a separate piece of legislation in Quebec that deals with the dump industry.

Mr. Wildman: It says here on page 4 of the Quebec presentation that the dump truck operation is not included under its regulatory reform. In other words, they are still regulating Quebec dump truckers while they have deregulated the rest of the industry, which is exactly what these gentlemen are asking us to do.

Ms. Kelch: But they also made the point, and I think it is important, that there has not been a new dump truck licence issued in Quebec since 1977.

Mr. Wildman: Yes. That is in here too, moratorium on licences since 1977.

Mr. Wiseman: But they mentioned too that they had, I believe the number is, 137 coming over into Ontario.

Mr. Wildman: It was 160.

Mr. Wiseman: Was it 160? Somebody asked how many were going the other way. I suppose, if they had time, they could find that number. But coming from eastern Ontario and knowing all that has happened across the border, not just in the trucking industry, they seem to have it all going their way. Lots of times our government does not seem to be protecting our workers on this side to the same extent. Whether it is buying tile or whatever, you have to buy it in Quebec, but they can ship it into Ontario and so on.

Mr. Chairman: I think that over the years the response by the Ontario government—I am not in a position to be defending either this government or the previous one in Ontario—

Mr. Brown: He would sooner have helped the one that was in before.

Mr. Chairman: The feeling was that Ontario did not want to get into that kind of reaction to something Quebec was doing that it did not approve of. It would be playing the same kind of game that it was condemning.

Mr. Wiseman: Along that same line, when Ms. Kelch meets with her provincial counterparts, knowing that this is a problem, and I am sure she does, and has been a problem for a long time, where they come into Ontario and take the jobs, as these gentlemen are saying—we see in Mr. McGuinty's area and my area that they do that and have for a while—I would think that deputy ministers and ministers, talking one with another, would try to—

Mr. Chairman: Assistant deputy minister.

Mr. Wiseman: Oh, I promoted her.

Ms. Kelch: Thank you so much..

Mr. Wiseman: I think they should be talking about how to smooth out these things. If Quebec truckers are coming in and taking our jobs, 160 of them or whatever it is that they mentioned this morning, then there should be something to let our truckers go in there.

Ms. Kelch: Just on Mr. Wiseman's point, certainly we do have discussions with Quebec in terms of the respective regulatory regimes, but I think we need to be cognizant of the fact that we could not really entertain what he is suggesting now that the Charter of Rights and Freedoms is in place, because there are mobility rights very specifically in that charter and the ability of an individual to move anywhere within the country for either habitation or employment purposes. We would have some difficulty making that point.

Mr. Wiseman: Are you saying then that with that in there, if Bill 87 and Bill 88 are passed in whatever form, anybody in the Ottawa area, in Mr. McGuinty's area, my area or anyone along the Ottawa River, can go across into Quebec, will not be stopped and will have free access back and forth? Is that what you are saying?

Ms. Kelch: No, but what Quebec is doing is being fair in that it is not allowing anyone new to get a dump truck licence in the province. They have not issued one to a Quebecker, and they have not issued one to an Ontarian.

Mr. Wiseman: But if there are 160 coming into Ontario right now and none of our people are allowed down there—

Ms. Kelch: That is not what Quebec is saying. .

Mr. Wiseman: —and then with the federal legislation that we will be coming in on if we go with Bill 87 and Bill 88—

Ms. Kelch: I think, to be fair, that what we should do is pursue with Quebec the number that Mr. Boulet said he could offer but did not have with him today. Based on what I heard this morning, I think he did indicate that there are Ontarians moving there.

Mr. Wiseman: He had the numbers coming in, but he sure did not have the numbers the other way.

Ms. Kelch: No, but he said he could get them.

Mr. Wiseman: Yes, but I take it that is a small number. Maybe before the end of our meetings, you could ask him to get that for us.

Ms. Kelch: We will pursue that, yes.

Mr. Wiseman: It would be nice to have, to see if there is anywhere near the 160 of our people working in Quebec.

Mr. McGuinty: I think you have to have a distinct dump truck to go to Quebec from Ontario.

Ms. Kelch: I beg your pardon?

Mr. McGuinty: You must have a distinct dump truck to go to Quebec from Ontario. A distinct society; hence a distinct dump truck.

Mr. Chairman: That is it.

Mr. Wiseman: Maybe it depends on what name is on it, too.

Mr. Chairman: Thank you, Mr. McGuinty and Mr. Wiseman.

Mr. Wiseman: "Wiseman" would never pass.

Mr. McLean: That very topic we were talking about is what my question was about. I observe on page 7 of the legislation of Quebec, it says, "Where the domicile or head office of the licensee is situated outside Quebec, the licensee shall, in addition, indicate the address of the licensee's establishment in Quebec or the name and address of his attorney."

I would like it clarified by the ministry or research what effect the Quebec legislation has on a trucker in Ontario who wants to haul either gravel or goods into Quebec. Are there stipulations in their legislation that does not allow that to happen freely, as it does for them to come into Ontario? That is all I want, just a clarification on that.

Ms. Kelch: Maybe I could ask Mr. McCombe to respond to that, because we do have a requirement in our legislation as well in terms of indicating address and name.

Mr. McCombe: Subsection 4(12) of the bill that is before you states, "Every licensee who does not maintain a place of business in Ontario shall designate and maintain a person resident in Ontario as an agent of the licensee for the purposes of this act and to accept service for and on behalf of the licensee."

It sounds to me virtually the same condition Quebec has.

Mr. Chairman: Okay, Mr. McLean?

Mr. Wiseman: Just to summarize that, if I could—

Mr. Chairman: Yes.

Mr. Wiseman: —I would hope that the ministry would give our researcher how many trucks are doing the same as the gentleman mentioned this morning in Quebec as is happening in Ontario, that 160. Is it 100 of ours, is it 50 of ours, or even a smaller number?

Mr. Chairman: I would follow up their invitation. They invited us to pursue that with them.

All right, there are no other questions?

Mr. Wildman: I have one question.

Mr. Chairman: I am sorry.

Mr. Wildman: Basically, what you are suggesting is that regulation continue for the dump truck industry, regardless of what happens with the rest of the trucking industry in Ontario.

Mr. Davis: Yes. If it's not broke, don't fix it.

Mr. Wildman: Very good.

Mr. Davis: That is what we are saying.

Mr. Wildman: You talked about the problems with Quebec and the possible problems that may develop in Manitoba and New Brunswick too, because they have recognized some difficulties. What sorts of things are happening in those provinces that have led them to consider regulations that would protect their dump-trucking industry? Are you aware of them?

Mr. Davis: No, it is feelings. The thing is that in places such as Manitoba, they are not experiencing the boom that Ontario is experiencing. The dump truck industry in the last few years has been doing very well because of the economic wellbeing of Ontario, but in Manitoba it is not the case. In New

Brunswick, surely it is not the case. As a matter of fact, the Premier of New Brunswick has just said they may not need to fix roads for a while. The largest part of dump trucking is road repair.

Mr. Pouliot: —a hard time in northern Ontario. Business has been going down in northern Ontario.

Mr. Chairman: I am surprised at any dump trucks in northern Ontario.

Mr. Pouliot: That is right.

Interjection: Well, the chair said it.

Interjection: Come spend a week up there.

Mr. Pouliot: Some respect for the chair.

Mr. Miller: It will look very nice. I would love to live there. It is the gold nugget of the north.

Mr. Chairman: See what you people started?

Mr. Wildman: The north is a lovely place, but that is not really what I was asking about.

Mr. Chairman: Okay, Mr. Wildman.

Mr. Wildman: I still do not quite understand what has happened. You have said that economically the situation is different in those provinces, but what has happened that has led their governments to consider reregulating, if I could use that term?

Mr. Davis: I think for Manitoba it is the fear of deregulation. I think that is what it is. They have looked at it and they are afraid that it may not be all that good for their regional trucking, their intra trucking.

Mr. Wildman: In the dump truck category.

Mr. Davis: Which, to my mind, I recognize as dump trucking.

1610

Mr. Wildman: Just one other short question: we have talked about other provinces. With other types of trucking, we have talked about reciprocity with the United States. Do you foresee any problems, say, in an area like Sault Ste. Marie, which is a border city, where you might have trucking firms from Sault Ste. Marie, Michigan, which could hire Ontario drivers and operate in Sault Ste. Marie, Ontario, which is a much larger centre and where there would be more business?

Mr. Davis: Why not? I could see a bunch of—even in the southern part of Ontario, from here to say—

Mr. Wildman: Around Detroit and Port Huron?

Mr. Davis: Yes. I do not know exactly what would have to occur for it to happen, but we have talked in that area. We are sort of wondering whether that would not happen, American dump trucks coming into southern Ontario and doing the work there.

Mr. Wildman: Yet a Canadian trucker would not have the same access into their dump truck market.

Mr. Davis: It is not likely.

Mr. Chairman: Mr. Davis and Mr. Dumontelle, thank you very much for appearing before this committee. We do appreciate your attendance here.

The next presentation is from Valley City Manufacturing Co. Ltd., Bob Crockford, president. Mr. Crockford is here. There is no printed brief as such, but Doug Arnott is handing around material.

Mr. Crockford: With your permission, I thought I would pass those around.

Mr. Chairman: No problem. Mr. Crockford asked for them to be distributed.

Mr. Crockford: I know that everybody is used to receiving very dry briefs on this subject. Since to some extent the Ontario government constitutes one of my customers, I thought it might be an opportune time for me to circulate one of my newsletters. A little bit of free publicity, I guess.

VALLEY CITY MANUFACTURING CO. LTD.

Mr. Crockford: I appreciate the opportunity of coming and speaking to this committee. I am both flattered and a little bit overawed because I had written to Mr. Fulton on the subject of Bill 88 and really expected that would be the end of my duty as a citizen and as a businessman.

I was a little bit taken aback when somebody called and said, "How would you like to come down and make a presentation?" I am very pleased to be here and my presentation will be very brief. Other than my newsletter, I am not going to burden you with a lot of written information.

Valley City Manufacturing is in its 104th year of operation. We are survivors of what is a true free market. The woodworking industry competes vigorously. The Canadian woodworking industry is a very dynamic industry and is very aggressively taking on its American competitors. Valley City, for instance, currently derives about two thirds of its work in the United States.

I simply offer this to you as a preamble to saying that there are many industries in North America which survive and flourish. There are many Canadian industries which survive, flourish and look forward to the opportunity and the larger opportunity of going out and showing the rest of the world what we can do.

I wanted to set that as a background because I think it is time for us to essentially ask the trucking industry to engage in the same sort of activity. I appreciate that when you have existed in a cosy, noncompetitive environment for a good number of years, it is only fair and proper that a period of transition be allowed to take effect. I do not think it is realistic to take a bunch of companies and their employees and, suddenly, turf them out of an isolated, cosy, protected environment into the big, cold world. Some transition is obviously in order.

I want you to understand that I do not handle the shipping for my firm, so I am not au fait with absolutely every detail of what we do in order to get

our goods to the customers in good order, but it is my impression in this period of the last couple of years, what I would call the prederegulation period, that the enterprising people in my organization have been successful in lowering our costs of delivery very considerably. By that I mean many thousands of dollars. We have an annual trucking bill of between \$300,000 and \$400,000 and it is my impression that we have been able, by special negotiations and that sort of thing, to achieve some considerable savings.

Because ours is a competitive industry, where we simply put a price in an envelope and hand it in to our prospective customers, including the Ontario government, obviously over time the savings which accrue because of lower trucking costs are ultimately passed on to the customers.

I do not at all mean to pick on the previous presenters, because I am sure the dump truck industry has peculiar circumstances and my real interest is in the long-distance hauling because that is the service I use. Someone over here said that the term "predatory pricing" is a wonderful phrase and it certainly is. It also allows us to perpetuate a myth. What is predatory pricing except a situation where supply exceeds demand? I think you might just as well ask the Ontario government to repeal the laws of supply and demand as to begin to deal with issues like predatory pricing.

The fact is that if my factor is empty and I am facing the prospect of laying off 50 or 60 of my skilled people, perhaps I am going to engage in predatory pricing as well and I may engage in it in the United States, Alberta or somewhere, but I am going to do what is necessary to keep my business surviving. Before we jump off the top of a building because someone has said that predatory pricing should be banished from the province, I would suggest to you that if you are going to try that, please do it for the woodworking industry first.

What is the public interest? It seems to me that the public expresses its interest in the way it purchases things. Provided that the threshold of safety is adequately maintained, and I believe the Ontario government has a commitment to doing that, I think that if a person is willing to invest \$150,000 in one of those great, big machines and enter into a market, and it turns out that there is nobody who wants to buy his services, I really fail to see how that is anybody else's problem but his. On the other hand, if there is a demand in that particular market for his service, he will probably survive and perhaps thrive. I think that is quite good.

Coming back to the passing along of cost savings, which I think is important because no matter which side you care to find yourself on in the free trade debate, and we will leave that one, the world economy generally is moving to a more deregulated and more competitive environment. I do not think that Ontario and Canada can exist in isolation from that trend, so the opportunity to allow businesses like Valley City and our other competitors to save money by using their wits in the purchase of the trucking service is very worth while. I think we saved perhaps \$50,000 in the last year by special arrangements. It happens in the case of Valley City that because we are a profit-sharing company, a good deal of those savings is passed on to our staff and finds its way into the community. There is a benefit in that respect as well.

One of the other issues that I heard in the previous discussion was the interprovincial issue. I have not memorized this bill, but it is my impression in reading it and in some casual conversations with people leading up to this presentation that there has been a genuine effort on the part of Ontario and

some of the other Canadian jurisdictions to reduce some of the interprovincial barriers. In general, may I say to you that any effort this country can make to reduce interprovincial barriers of any sort is a good move. If in fact this bill does not take steps in that direction, then I would agree with the folks who think it ought to be stopped, because it seems to me that any effort we can make to reduce interprovincial trade barriers is worth while.

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The Ontario government, I think someone said earlier, has shown remarkable leadership and restraint over a period of nearly 30 years with respect to interprovincial trade between Ontario and Quebec. Ontario's patience is surely legendary in that respect. I would have to say that the times are changing. I think Quebec is emerging from its protectionist mode and I would view that as being a very good step, but certainly with respect to this particular bill my understanding is that it goes some way to reducing interprovincial barriers and that is a good thing.

Having made those points, I would be happy to either answer questions or to leap up and leave the room immediately.

Mr. Chairman: Mr. Crockford, it is not often we get witnesses who are so willing to be flexible that way.

Mr. Wildman: Thank you very much. I appreciate your candour. Is it fair to say that in a general sense you are in favour of deregulation?

Mr. Crockford: Absolutely.

Mr. Wildman: That is why you would like to see this legislation passed. Are you aware that according to the government this is not deregulation? They have a term called reregulation.

Mr. Crockford: Sure.

Mr. Wildman: In other words, from your point of view, a rose by any other name.

Mr. Crockford: Predatory pricing, you know. As I say I am quite prepared to accept the idea that there is probably a series of steps and stairs one must go along to achieve the ultimate goal.

Mr. Wildman: But basically, if it effects deregulation or a move towards it, you are in favour of it.

Mr. Crockford: Very much so.

Interjection.

Mr. Chairman: Zip. You have stimulated Mr. Pouliot.

Mr. Pouliot: No, I did not mean that. My apologies, Mr. Chairman, if I startled you.

I too was impressed with the goodwill and the candour of your presentation. You volunteered in the same tone that the Ontario government, the people of Ontario, was one of your clients. Can I ask you, what percentage of business do you do with the Ontario government?

Mr. Crockford: Not very much. It depends on the year. It depends on how low our price is.

Mr. Wildman: It depends on whether you engage in predatory pricing.

Mr. Crockford: I can fill my factory working with the Ontario government if I want to engage in predatory pricing, but I do not want to. It rises and falls.

Mr. Pouliot: I am being serious, Mr. Crockford.

Mr. Crockford: I understand and I am going to give you a serious answer. It rises and falls, but right at the moment it is quite low. Indirectly, we do some work for Ontario hospitals—by that I mean the hospitals out there in the world, and so indirectly I guess that comes from the Ministry of Health—but not very much at the moment. If it gets to be five per cent in the last few years, I would be surprised. I could check if you like.

Mr. Pouliot: I am taken by your attitude, your approach. A person like you, who is a small entrepreneur, you are a role model to people like myself.

Mr. Crockford: I am flattered.

Mr. Pouliot: Bear with me. We will get there. Bear with me, Mr. Crockford, it is easy. I will take a guess. Would you not be an advocate of free trade?

Mr. Crockford: I would.

Mr. Pouliot: So you really believe in free trade.

Mr. Crockford: Yes.

Mr. Pouliot: That is right. You believe in deregulation or reregulation.

Mr. Crockford: Yes.

Mr. Pouliot: They go hand in hand. It is the same philosophy, right?

Mr. Crockford: No, I do not see it as the same thing at all.

Mr. Pouliot: Competition in the marketplace, the essence of the free enterprise system, Mr. Crockford. I am comfortable with it. Aren't you?

Mr. Wiseman: Gosh, he is going to be a Tory yet.

Mr. Pouliot: It is getting late, Mr. Chairman. But, I have no fear, Mr. Crockford, and I do not want to disappoint you because I heard there will be no deal. That is the bottom line. The Premier (Mr. Peterson) said that. The Premier said there would be no deal, so what you are getting here is sort of piecemeal free trade, let's say, a little here and a little there. I see the same philosophy when we are talking about free trade as when we are talking about deregulation.

I read this and I am impressed. I noted your happy customers. You are a

small firm. You believe in profit sharing. Oh, I will take another guess. Are your employees unionized, sir?

Mr. Crockford: Yes.

Mr. Pouliot: They are? I was wrong on that one. Okay. Are you listed on one of the exchanges?

Mr. Crockford: No.

Mr. Pouliot: You are not?

Mr. Crockford: We have about 110 people in the carpenters and joiners union. We have been unionized for about 20 years.

Mr. Pouliot: I see four new ones have joined your quarter century club.

Mr. Crockford: Yes.

Mr. Pouliot: I want to wish you well, but as a last question, you have also mentioned that you have saved some \$50,000 under the present system. Is that by virtue or by reason of a special arrangement that you made with the truckers, with people who are moving your goods? How did that come about?

Mr. Crockford: I do not honestly know. What I have found in a couple of large contracts we have had in Canada is that from the time—you have to understand that when you do a \$70-million or \$100-million hospital, it will frequently be on your books for three or four years as an order. We estimate them sometimes years before that. You might be dealing with the Toronto General Hospital for five years or something.

The particular job that came to my attention was one in Alberta where, from the time the job was estimated to have something like \$7,000 per truck in the cost of transportation, through a series of changes in rates or whatever, there was something in the order of \$2,000 to \$3,000 per truck in reduced cost. That struck me as quite a remarkable trend. I do not know whether that is because, suddenly, the entire Canadian trucking industry decided it was time to begin to do things with the rates or what it was, but the trend got going. That was a couple of years ago and I began to realize, as we moved towards Bill 88, that probably what we were seeing a little bit of was likely what was in the cards under a deregulated environment.

It may be that in fact I am all wrong, that whatever we have seen is all we are going to get, but I doubt it.

Mr. Pouliot: Thank you.

Mr. Chairman: Thank you, Mr. Pouliot. If there are no other questions, Mr. Crockford, thank you very much for appearing before the committee.

Mr. Crockford: I thought I was more interesting than that.

Mr. Chairman: That completes the committee's business for today. Tomorrow morning at 10, Dow Chemical will be here to make a presentation. I know you will not want to miss that, Mr. Pouliot. Until tomorrow morning, we are adjourned.

The committee adjourned at 4:30 p.m.

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STANDING COMMITTEE ON RESOURCES DEVELOPMENT

ONTARIO HIGHWAY TRANSPORT BOARD AMENDMENT ACT
TRUCK TRANSPORTATION ACT

WEDNESDAY, SEPTEMBER 14, 1988

Morning Sitting



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Staff:

Richmond, Jerry, Research Officer, Legislative Research Service

Witnesses:

From Dow Chemical Canada Inc.:

White, M. J., Section Manager, Planning Distribution and Traffic Department,
Sarnia Division

Johnson, R. W., Manager, Overland Transportation

Moser, John, Manager, Traffic, Eastern Canada

From the Ministry of Transportation:

Kelch, Margaret, Acting Deputy Minister and Assistant Deputy Minister, Safety
and Regulation

From United Parcel Service Canada Ltd.:

Smith, Glenn C., President

LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON RESOURCES DEVELOPMENT

Wednesday, September 14, 1988

The committee met at 10:10 a.m. in committee room 1.

ONTARIO HIGHWAY TRANSPORT BOARD AMENDMENT ACT
TRUCK TRANSPORTATION ACT
(continued)

Consideration of Bill 87, An Act to amend the Ontario Highway Transport Board Act, and Bill 88, An Act to regulate Truck Transportation.

Mr. Chairman: The committee will come to order.

Mr. McLean, welcome. This morning we have two witnesses, the first of which is the Dow Chemical company. If you would introduce yourselves, gentlemen, we could proceed. Your brief has been distributed to members. It is exhibit number 035, which was distributed yesterday. If you do not have one, let us know and we will get another one around to you. Okay, gentlemen.

Mr. White: My name is Mort White. I am the section manager of planning, distribution and traffic for the Sarnia division of Dow Canada.

Mr. Johnson: I am Ron Johnson. I am the manager of overland transportation for Dow Canada.

Mr. Moser: I am John Moser. I am traffic manager, eastern Canada, for Dow Chemical Canada in Sarnia.

Mr. Chairman: Welcome to the committee. We are pleased that you are here. I do not know who is going to walk us through the brief, but I assume it will be one of you.

Mr. White: Ready?

Mr. Chairman: Yes, sir.

DOW CHEMICAL CANADA INC.

Mr. White: Good morning. On behalf of Dow Chemical, we thank you for the opportunity to appear before this committee on the subject of deregulation.

Dow Chemical Canada, with headquarters in Sarnia, is a wholly owned subsidiary of the Dow Chemical Co. with world headquarters in Midland, Michigan. Dow manufactures and sells basic and specialty chemicals and plastics, consumer products and pharmaceuticals. The company employs approximately 3,800 people and has manufacturing operations in Sarnia and Toronto, in Fort Saskatchewan, Alberta, and in Varennes, Quebec. We operate distribution terminals in Vancouver, Thunder Bay and along the St. Lawrence Seaway in Cornwall, Three Rivers and Quebec City.

Dow Canada relies on the highway mode and for-hire carriers to transport 2.5 billion pounds of product annually into the Canadian domestic and United States of America export markets, at a cost exceeding \$35 million dollars a

year. Approximately 65 per cent of this volume originates from our Ontario manufacturing and shipping locations.

Just as an aside, take a look at slide one on the other handout I passed out this morning, showing the volume of Sarnia division shipments. We make over 20,000 shipments. These are shipments out of the Sarnia division on an annual basis. In addition to that, there are significant additional volumes from the Toronto area manufacturing, packaging and distribution locations.

In the light of the importance of highway transportation to our business, we appreciate this opportunity to come before the standing committee on resources development to express our views on this very important legislation. Dow Canada agrees with the purpose of Bill 88, as stated in section 2, and strongly supports the need for economic regulatory reform in Ontario's highway mode for the following reasons:

1. To increase competition within the mode for the purpose of improving service levels and reducing costs for users of the service.

2. To permit the use of confidential contracts between shippers and carriers in the negotiation of freight services. Just as an aside there, a comment is that customers are interested in the delivered price. We think we have the best chance to optimize carrier selection and equivalent utilization to minimize costs.

3. Passage of Ontario's highway deregulation legislation will encourage other provinces to pass similar legislation and thereby expedite highway economic deregulation throughout Canada.

4. Uniformity of entry requirements into both intraprovincial and extraprovincial trucking in Ontario and Canada is important in order to establish and maintain high standards.

5. The requirements for the commercial vehicle operator's registration certificate, fitness and competency in the legislation package will emphasize and encourage safer and more responsible trucking in Ontario.

Ontario's trucking industry has been highly regulated for many years. It is now a mature industry and, in our opinion, capable of competing effectively in the North American marketplace without the protection of economic regulation. An interesting piece of data for shipments out of Sarnia going into the US, where there is free competition between Canadian and US carriers, is that Canadian carriers hold over 60 per cent of the business into the US.

It is important to Dow Canada's Ontario operations and to Ontario's manufacturing industry as a whole, if we are to be competitive in an North American marketplace, that the Ontario trucking industry be economically deregulated as soon as possible.

The current intraprovincial regulatory environment, by restricting entry and supporting the practice of limited operating authority, has limited competition, discouraged innovation and restricted productivity improvements.

Another comment I would like to make is that trucking is becoming more sophisticated, with electronic data interchange to eliminate paperwork in the handling of orders, bills of lading, freight invoices and payment, automated order tracing systems and the use of computers to analyse costs and provide rate quotations.

These limitations have all adversely affected costs for highway transportation. In Dow Canada's case, these limitations have impacted on our Ontario highway movements by:

1. Limiting our ability to consolidate our business with a few selected carriers, with the attendant cost savings, due to carrier lack-of-authority limitations. In this morning's handout, I just gave you an example. In exhibit 2, I listed our major bulk tank truck carriers, and you can see the kind of gaps we have, the mixture of authorities which exists within those carriers we presently use. To improve both our efficiency and that of the carriers involved, we are measuring overall performance in a variety of areas to select the top two or three carriers for each product line.

- 2 Limiting our ability to improve the utilization of plastic pellet trucks due to lack-of-authority limitations. If you turn to exhibit 3, I have a graph showing the kind of opportunity that exists. It is a process where we are working with a major carrier, and in fact we have the process with two or three different carriers, showing that if we can improve the utilization of his equipment, he will do better and we will do better in terms of the cost standpoint. Both sides win. The present mix of authorities makes this process difficult in attempting to use equipment more frequently.

3. Restricting our ability to fully consolidate packaged-goods shipments due to carrier lack-of-authority limitations. If you turn to exhibit 4, it is a listing of some of the carriers we use. This is just a recent sampling period. The majority of these are packaged-goods carriers coming out of the Sarnia division. The data were collected to help us understand and improve our billing accuracy. As you can see from the list, 19 of the carriers we use had 100 per cent of their freight invoices rejected by our accounting department. The basic message is that we cannot work with or understand and do not need 66 carriers.

In exhibit 5—this graph, by the way, turns out an awful lot nicer in colour. It is easier to read. Anyway, the graph shows, on the right-hand side, the 1988 volumes in each bar graph and, on the left-hand side, the 1987 volumes by carrier. We are attempting to increase consolidation in our carriers. We are still very inefficient, with too many carriers running in and out every day with partial loads. Deregulation will allow more carriers to provide full service and thus improve their efficiency.

4. Restricting our common carrier's ability to improve equipment utilization, and hence reduce costs, through limitations on backhauling of other products.

In addition to the anticipated benefits that regulatory reform would bring in the service and economic areas, Dow welcomes the improved safety-related initiatives contained in Ontario's highway deregulation bills. We are confident that the safety performance of Ontario's trucking industry will be improved by: requiring all applicants to have a reasonable past performance record; requiring all truck operators to hold a commercial vehicle operator's registration; requiring all applicants to pass a certificate of competency written test, and requiring all applicants to pass a fitness test.

In addition, Dow also welcomes and strongly supports the National Safety Code, which, when completed, will add further impetus to safety improvements in both Ontario's and Canada's highway transport industry.

Dow Canada is aware of the concerns expressed recently by the Ontario

Trucking Association with respect to the issues of US state reciprocity and the lack of the Ontario Highway Transport Board power to deny a licence application.

With respect to the reciprocity issue, since Ontario carriers have been able to obtain interstate or transborder trucking licences from the US since interstate trucking was deregulated in 1980, we feel the same accommodation should now be afforded to US carriers in Canada under Canadian highway economic deregulation. In our opinion, Ontario truckers would continue to be adequately protected from US carriers using American vehicles and drivers to pick up and deliver goods within Canada by existing federal customs and immigration regulations and by the authority provisions of clause 10(3)(b) and section 41 of the proposed Bill 88.

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With respect to the lack of authority issue, it is our opinion that sections 9, 10, 37 and 41 of Bill 88 currently provide all the legislative authority necessary to give the OHTB the authority it needs to severely limit or even deny licence applications if contrary to the public or provincial interests.

In conclusion, studies related to reform of Ontario's highway trucking legislation have been in progress for more than 10 years. Considerable input has been provided to government by all interested and affected parties. As a result of this consultative approach, the current proposed legislation represents a compromise, and rightly so, of trucker, shipper and other party interests.

In addition, under section 36, the bill contains a requirement for the Minister of Transportation to appoint an advisory committee on truck transportation to advise and make recommendations to the minister with respect to the act and matters concerning the transportation of goods in commercial vehicles.

In the light of the preceding, Dow Chemical feels that Bills 87 and 88 should be passed into law as soon as possible and therefore recommends that the standing committee on resources development urge passage of this legislation in its current form as soon as the Ontario Legislature convenes in the fall.

This concludes our formal presentation. The three of us are now open to any questions you may have.

Mr. Chairman: Thank you very much. I have one question. On page 4 of the attached material—I must confess to being a layperson in this whole field—I do not understand the headings. Are they "Received," "Rejected" and "Percentage rejected"?

Mr. White: Yes. We did a sampling of freight bills coming into our accounting department and this is how many freight bills we received in the sample; we just grabbed a representative sample for a few days in the month. That is the number of freight bills we had in the sample. The "Rejected" column shows how many could not be paid by our accounting department without going out and doing some more work with the carrier to sort out what information was missing on the freight bill. They were unpayable the way they came in, which means delays in payment, which means extra rework on our behalf and their behalf. The column that is "Percentage rejected" is how many of the freight bills coming in we rejected.

Mr. Chairman: It was not your fault that they were filled out wrong. Was it the fault of the Ontario Highway Transport Board? Why were there so many rejections? I do not understand that.

Mr. White: The problem is in working with carriers and us understanding their needs and them understanding our needs, so that we both get the numbers we need in the places they should be so we can both understand what is required.

Mr. Chairman: Okay. Then my final question is: How will these bills change that?

Mr. White: By being able to select fewer carriers and work more closely with them—

Mr. Chairman: I see.

Mr. White: In some cases, the carriers, for example, would put a person in their accounting department who would handle Dow Chemical's bills if the account was big enough. But when you have 66 carriers, the work is spread among everyone in the accounting department and we are just going to continue to have high levels of rejection. That is an example of the inefficiencies in the process.

Mr. Chairman: I understand.

Mr. McLean: Could we get a clarification from the ministry with regard to the transporting into Quebec and what its legislation denies? Is there a clarification on that today?

Ms. Kelch: The numbers from yesterday? I do not have those numbers yet today, no.

Mr. McLean: It really was not the numbers. What I was asking was whether their legislation is denying truckers from Ontario going into Quebec. It was the dump truckers who had that issue, and I was wondering.

Ms. Kelch: What we clarified yesterday was that there is a separate piece of legislation governing dump truck operation in Quebec and there have been no new dump truck licences issued in Quebec since 1977. The movement issue is one we are still working on with Quebec to ensure that we have the accurate numbers because Mr. Boulet did not have them with him yesterday.

Mr. Pouliot: Gentlemen, thank you for your presentation. On page 4 of your contribution, in the last paragraph you made reference to potential improvements regarding safety. At the present time, without the proposed legislation becoming law—not yet—are you satisfied with the safety requirements in Ontario?

Mr. White: I think what we do is spend a lot of time, because of the nature of the materials we handle, working with the carriers on their safety requirements. I would think that in many cases our standards, our requirements, are perhaps higher than theirs. In the process of selecting a carrier, obviously one of the major considerations is safety. Everything from equipment safety—we audit the carrier's terminals, equipment and the people coming into the plant. We provide training sessions for their drivers with some frequency for various materials.

Mr. Pouliot: I guess the heading speaks for itself. With respect, of course, Dow Chemical, more than most, would have a vested interest in safety by virtue of the very goods you are moving.

I am still seeking clarification with regard to safety. With Bill 88 becoming law, it is the opinion of many that the requirements of entry will be far fewer, that people will rush to the marketplace and having satisfied the criteria set forth by the ministry will fairly automatically or fairly easily be given a licence, that safety, as it was in California and elsewhere, will be compromised, and that there will be an invitation as the profit margin gets thinner to compromise safety. That has been the experience in the United States. Are you aware of that with the regulation process, as started in California in 1980?

Mr. Johnson: I think that is arguable. California has had trouble. It depends who you listen to. I think our feeling, and in talking to our US parent I think it feels, that safety overall has actually improved, in spite of the California case. So we do not feel that deregulation is going to contribute to less safety. We frankly feel it will contribute to more. We think the bill, by requiring the commercial vehicle operator's registration and fitness and other requirements, will actually improve the safety of trucking in Ontario. That is our opinion at this point.

Mr. Pouliot: Your brief says little about fair return on investment for the people who have faith and hope to benefit by investing in Dow Chemical—I understand you are listed on all the major exchanges—and cost savings to consumers eventually. What impact would the regulation have? What percentage of your expenditures, for instance, roughly, are based on transportation?

Mr. White: It is about six to eight per cent. It is different for different products, obviously, but it is six to eight per cent for the Sarnia division. The way we see it is that by improving the efficiency of the carriers and by increasing our flexibility, they should be able to reduce their rates and still be more profitable.

That is part of the process we are starting into with some of the carriers in consolidating now. We think there are a lot of things we can do to improve their efficiency, using the same carrier inbound and outbound, for example, and filling the carrier's truck. Rather than having 66 carriers coming into the division on a daily basis, who are the five or ten you are going to use? Use him full inbound and full outbound. He would do better and we would do better.

Mr. Pouliot: I have one last question. For lack of better terminology—I hope you will be benevolent and kind this morning. I noticed on page one where you describe your company that you are a wholly-owned subsidiary. I would assume that the business climate for Dow Chemical is better in the United States of America than it is in Canada in terms of corporate tax, incentives, cost of labour and cost of commodities, for instance.

I have not read in the financial pages of the Toronto papers anywhere that Dow has any intention of having its head office in Canada. Why should they? They are doing very well. In fact, I think they achieved record profits last year.

Do you feel the same can be said with regulation of trucking for people

who have fleets who would be more comfortable operating in the United States and that this would eventually cost jobs, because we do not have reciprocity? I think this is the crux of the matter. This is the important criterion that has not been filled. Forty-three of the states are indeed very much regulated. You have deregulation at the federal level, but you do not have deregulation within those 43 states, so the playing field is not level.

What these distinguished colleagues are suggesting, with the help of these fine people here—

Interjections.

Mr. Pouliot: No, because this is the truth.

It is that we give away the right for people in the United States to operate in Canada, and yet we do not have reciprocity. Aside from all the advantages, what members of the opposition, the survivors, are concerned with, is the loss of jobs for Canadian workers.

Time and time again, people like yourselves have come here and said to us, "Look, the marketplace always chooses better." What we are saying is that regulation is here for a purpose, and it is to serve the remote sections of Ontario, for instance, the small communities that do not have the resources or the policy of choice that the big players have. I would welcome your comments in terms of your concern about jobs. Do you see any jobs lost, or more jobs being created by virtue of competition?

Mr. White: Let me just give you a comment. Dow Chemical is a corporation that started out in Midland, Michigan. The reason it is located there is because of underground salt deposits, the same salt deposits that are in Windsor, Goderich and Sarnia.

The first product was chlorine. Dow no longer makes chlorine in Midland, Michigan. Its biggest plant, its world headquarters, Midland, Michigan, gets its chlorine from Sarnia. It gets its caustic from Sarnia. It gets its solvents from Sarnia. So on the basis of competition, Dow's major product, its biggest product worldwide, is no longer made at its head office; it is made in Canada and shipped over to it.

Mr. Johnson: We, as a Canadian area, compete with the other Dow areas for business worldwide, so it is actually an advantage to us, and we are as competitive as anybody else is. As he said, we are shipping a lot of product into the US, so we are competing with our US parent for US business and succeeding in many areas; similarly, in the Pacific and over to Europe as well. We are able to compete within that system, and quite well, too.

Mr. Pouliot: The profit margin for hauling, for transportation, is lower than manufacturing. It is not even marginal, it is lower by quite a bit.

Mr. White: Too low.

Mr. Pouliot: In fact, they feel they are highly competitive at the present time. You are looking at 1.1, 1.6, 1.7 per cent as opposed to 4.8 to 5.3 at the manufacturing level.

Mr. White: I keep making the comment, though, we are not trying to drive down rates; we are trying to increase efficiency. If we can increase efficiency, the carriers can do better and will do better, and that is really

the kind of examples I am showing, the waste that is in the process, the inefficiency that is in the process. All these carriers coming in and out, partly full, running around town with part loads of material. That is inefficient and wasteful.

Mr. Pouliot: I welcome your comments.

Mr. Wiseman: I just want to thank you for your presentation and the handout you gave this morning with the list of the billings and one thing and another. Being that your parent company is in the United States, I have seen some trucks on the road with Dow Chemical written on the tanker part, have I not? Maybe I am wrong. Does your parent company south of the border own a fleet of trucks?

Mr. White: No.

Mr. Wiseman: They do not? You do not have any money in any of these drivers?

Mr. White: No. We own rail cars. We do not own any trucks.

Mr. Wiseman: Maybe that is what I am thinking of.

Mr. White: We have no interest in the trucking companies.

Mr. Wiseman: In the US, your parent company or the companies in other places do not own the trucks, when it might be easier if you could bring the products you need in to Sarnia or wherever to make up these chemicals? They could use their trucks there to come up and bring loads back into the United States and maybe do our truckers out of more business.

Mr. Johnson: We do not have any trucking business.

Mr. Wiseman: You do not. There were some who were in a week or two ago. They were telling us, if I am right, that they stuck mostly to certain carriers because apparently if you have a spill or have something happen with one of your trucks, not only the carrier is on the hook, but the chemical company is on the hook. If the carrier is not carrying enough coverage or whatever, the shipper gets nailed. You mentioned you have a lot of people training. You give the drivers training in how to handle some of these chemical and so on. When you have a list the size of this—only you yourself, sir, have grey hair like myself—it must give you a lot of grey hairs worrying if these are all good, safe drivers who know how to handle a possible chemical spill.

Mr. White: That is obviously the reason why we are trying to consolidate and work more closely with selected carriers. We need to know each other better and understand everything, from training to equipment to our requirements to their requirements.

Mr. Wiseman: We heard the other day that about half of the trucks on the road are owned by companies, indirectly or whatever. Have you ever thought of getting into that, reducing your number of carriers? Perhaps your time of delivery would improve and so on.

Mr. Johnson: Yes, we have, but we have always decided not to in the

end. About every five years we would end up looking at this again, but I think under the economic deregulation—

Mr. Wiseman: You must be getting an awful good rate, with transporting better than 2.5 billion pounds a year—I think your first page mentioned that—so rates would not be a big factor. You must be able to work on these carriers to get the best possible rate and tell them what you will give them.

Mr. White: We have lots of opportunities to ship more cheaply than we are presently shipping. We are not using them because of reliability, safety, the equipment they provide, whatever the reason. There are all kinds of rates out there that are cheaper than what we use.

This graph shows an example of the kind of thing where I think you can get closer to a private trucking operation. You can accomplish that yourself, if you put the right incentives in with the carrier. The reason private trucking is worth while is because you use the equipment, use it well, use it continuously. We think we can accomplish the same thing with an existing carrier, given the right incentive. We are not in the business of buying, selling and maintaining trucks and hiring drivers and the whole process you have to go through, nor is Dow in the US.

Mr. Wiseman: I have just one more question. You mentioned part loads. Would most of yours not be bulk shipment, full loads? What we heard a week or two ago was that most of the full loads, except in some rare cases, are getting backfilled now. One fellow told us if he does not have a backfill 90 per cent of the time, he is in trouble. He cannot work on anything more than 10 per cent going back empty. Everyone seems to be putting their eggs in one basket. If we get those backfills or back loads, then the trucker will be able to cut his price. The one chap from Belleville, I believe it was last week, said that he worked on 90 per cent; anything more than 10 per cent and he was in trouble. He was trying to cut that even more.

Mr. White: We have a very low percentage of backhauls in our bulk equipment. There are two reasons for that. One of them is that the equipment is fairly specialized. Acid equipment, for example, is rubber lined, and the process of trying to wash it out and switch services and bring it and then wash it out again and switch services again is very expensive. Most of our bulk equipment for the Ontario hauls has no backhaul at all. Sometimes on a long-distance haul out west—Quebec, for example—or long distances in the US, the carrier would arrange a backhaul, but from a quality standpoint and from an equipment selection standpoint, we have very few backhauls in the bulk equipment.

Our problem is that most of these carriers you see on this list are package carriers, so it is with them that there is a lot of opportunity for improving as well. It is they who are going out with partial loads.

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Mr. Chairman: Dow is a big operator in the field out there. I look at your chart with all these various carriers, so many of them. Is the fact that a lot of them cannot truck in certain jurisdictions, such as particular American states, one of the reasons you have so many carriers?

Mr. White: Yes. There are a couple of reasons. One of them is that

some of these carriers could be selected by our vendors. Where we do not have control of the freight, they have selected the carrier.

Mr. Chairman: I see.

Mr. White: The other one is that there are various jurisdictions. As I say, we have been working and are starting to try to consolidate that. We are running into some roadblocks, but you can see the graph I showed where we are starting to consolidate some of the business with certain carriers.

Mr. Chairman: We get conflicting stories about various American states having fairly tough rules on transporting, trucking in their states. I know you do not own your own trucks, but to what extent are carriers coming to you and saying, "No, we cannot do that because of restrictions"? I am wondering if you are aware of that as a problem among your carriers.

Mr. White: Just to go back to this carrier revenue graph, the biggest package carrier right now is Inter-City Truck Lines.

Mr. Chairman: Which one is this?

Mr. White: This is the bar graph. The biggest carrier on that graph is Inter-City Truck Lines, which is a subsidiary of the Reimer group. Our biggest carrier in the United States is a carrier called Trans Canada Truck Lines. The biggest carrier in the US and the best rates we have from almost any point in the US is Trans Canada Truck Lines. We use them for almost any inbound or outbound freight to or from the US, packaged goods. They have by far the best rate. Actually, Trans Canada is shown on this bar. It is the fifth one from the right-hand side. They are almost exclusively our US carrier. As I say, they do have the best rates both to and from the US.

If we bring something in from Texas, for example, they are able to find something to go back to Texas if we cannot arrange the backhaul ourselves. They are very competitive.

Mr. Chairman: The reason I asked the question was that on page 5 of your brief you touch on the reciprocity issue. You say, "Since Ontario carriers have been able to obtain interstate"—it says it was deregulated in 1980—"we feel the same accommodation should now be afforded to US carriers in Canada." We keep hearing that there are 42 or 43 American states that have not completely deregulated and that this causes problems. Therefore, the phrase that is used so often is that it is not a level playing field between Ontario and those jurisdictions. But I guess, not owning your own trucks, you do not have to deal with that.

Mr. White: No. I think all they are really restricted on is if we, say, ship something to Freeport, Texas, they can bring something back from Freeport, Texas, but I guess the rules in Texas may say that they cannot take something from one place in Texas to another place in Texas. That does not seem to be a problem for a guy like Trans Canada Truck Lines. They find something to come back.

Mr. Chairman: Are there any other questions from members? If not, Mr. White, Mr. Johnson and Mr. Moser, thank you very much for appearing before the committee. We appreciate your contribution.

Mr. Johnson: Thank you for the opportunity.

Mr. Chairman: I think I explained to one of the gentlemen before that our intention is to complete these public hearings this week, and then when the Legislature returns in October we will deal with the clause-by-clause consideration of the two bills, at which time there is an opportunity for members to make amendments and so forth if they so choose to do. Then they will be referred back to the assembly.

Our next presentation—members should have the brief—is from United Parcel Service. Glenn Smith is with us. I seem to recognize you, Mr. Smith, from having seen the movie again yourself. You have seen this movie before, have you not? Welcome to the committee.

UNITED PARCEL SERVICE CANADA LTD.

Mr. Smith: Thank you for the opportunity to appear here. I apologize; I understand the brief did not get out until just a few minutes ago but I believe it was delivered yesterday.

My name is Glenn Smith. I am the president of United Parcel Service Canada Ltd. UPS is a company that specializes in the pickup and delivery of small packages and we serve every address reachable by road in Ontario. We are owned by our managers and managed by our owners. We are not a public company.

Our company began providing this package delivery service in 1975 in Ontario. In the United States, the parent company has over 81 years of experience in the small-package business. In Ontario we make pickups and deliveries wherever shippers and receivers may be located. There is no address within our territory that is out of reach of our drivers, whether in a city, a town or a village or at places outside any populated area, such as farms, mine sites, tourist and lumber camps, as long as there is a road in.

To provide our service, we have 1,906 employees, including more than 200 manager-share owners, in Ontario. We operate from 31 locations in the province and our automotive fleet today consists of 857 pieces of equipment. By October 15 that number will increase to 1,116.

In 1987, we delivered over 15 million packages in Canada. In addition to the service in Ontario, we served all points in southern British Columbia and the Metropolitan Montreal area. On August 18 of this year the Quebec Transport Commission granted us authority to serve all points in Quebec on an extraprovincial basis. In the same month, our ground service was expanded to include portions of Alberta, Saskatchewan and Manitoba.

Currently the service is available to more than 60 per cent of the Canadian population. We presently deliver in excess of 70,000 packages a day. On October 3 of this year we will expand our domestic and international air service, which will allow us to provide our customers with air service to and from every address in 40 countries and 57 cities in the People's Republic of China. This expanded air service will be provided to and from every address in Canada.

We will follow those service improvements with expanded ground services to and from each address in Canada, but with highway expansion it cannot be accomplished so expeditiously, as it is subject to the regulations of both the federal government and the provinces. Only in Ontario do we have both intraprovincial and extraprovincial licences which allow for complete geographic coverage.

All of this leads me to the purpose of my appearance today; that is, to tell you that UPS supports Bill 88 and its companion legislation, Bill 87, in their entirety. This legislation will go a long way towards ensuring that the province's transportation infrastructure is responsive to the diverse needs of the society.

Based on my experience and observations over the past 14 years in Ontario, I believe the Public Commercial Vehicles Act, which Bill 88 will replace, has delayed the revitalization of the trucking industry. Because competition was held in check by rigorous tests of entry into the marketplace for new trucking services, those who were licensed felt no real pressure to add needed services or to price their services competitively. In the end, as always, it was the consumer who paid the higher prices for those transportation services.

Because many of them never learned to compete, it may well be the truckers themselves who will suffer the most. There was never a need to sharpen management skills as long as government had insulated them from competition. Now they are faced with a new regulatory process in Bill 88, one that will be less tolerant of those companies that fail to offer new services and fail to give shippers competitive rates. In a freer marketplace, it will be the shipper who dictates who will survive and who will not succeed.

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Bills 87 and 88 may be the best thing that ever happened to the Ontario trucking industry, despite what the Ontario Trucking Association, its officers and members who appeared individually before this committee might have told you. Let me tell you why I say that. I can do that best by telling you the United Parcel Service Canada Ltd. story in Ontario. After you have heard it, I am sure there should be no doubt in your minds that the old regulatory process must be disposed of with dispatch and finality.

In the spring of 1977, UPS applied to the Ontario Highway Transport Board for operating authority which would (1), replace automobiles which were carrying packages with commercial vehicles and (2), expand the service to northern Ontario. That fall we began what became the longest hearing in the history of the Ontario Highway Transport Board.

The hearing consumed 110 sitting days. There were 350 public witnesses for UPS and another 350 for our opponents and competitors. Our shipper and receiver witnesses came from all over the province. Many of them were from small businesses from remote areas which were starved for our type of service and our prices, which were competitive with those of fourth-class parcel post.

Most of our witnesses came to Toronto to testify on our behalf at a great cost to their own businesses. If you have ever operated a small business, you know what it costs to leave it for two or three days at a time. In any event, despite their wonderful support, on June 30, 1978, the transport board published a decision that denied us the right to use trucks on the public highways of Ontario.

The decision amazed us. We knew that we had put on a convincing case. We had demonstrated that several areas of the province had no door-to-door service. We showed that only one carrier had features of service that even approached ours. That carrier later admitted to the transport board that it had attempted to copy our service from documents it had received from UPS.

It was incredible to us that the transport board would deny us permission to expand. Our competitors, on the other hand, were delighted. They would be free from effective competition. We had invested a great deal of money in the hearing process. We had several lawyers and other consultants contributing their expertise and experience to our cause.

It was the opinion of all of our people that no objective person could arrive at any other decision than to award authority, immediately allowing UPS to serve the entire province. Yet we were denied. We were suspicious, of course. We were sure that the decision we received had nothing whatever to do with the evidence presented during the case. We immediately appealed to the courts and we petitioned the cabinet.

It is a good thing we did. Within days of filing our appeal to the courts, a lawyer for one of the competitors called our counsel to confess in fact that he had written the transport board's decision "in its entirety." It had not been written by any member of the Ontario Highway Transport Board. It had been seen by only the chairman of the board.

The chairman of the transport board and the other member of the board who sat in on the case had signed it, but neither of them wrote a word of the public decision. With these details of the lawyer's confession, we amended our petition to cabinet. Shortly afterwards, the Globe and Mail began an investigation of the matter and published its findings confirming the facts of the confession.

Four months later, the transport board, at the direction of the Minister of Transportation and Communications and under a new chairman, provided us with the opportunity for a new hearing. It was now a year and a half after we had originally applied for the authority. All we had to show for the application was a proposed rehearing date and a staggering expense of nearly \$5 million. That is not the end of the story.

On the day we showed up for our rehearing, our competitors challenged the right of the transport board to hold a second hearing and we all went off to the Supreme Court of Ontario to argue the question of jurisdiction. The court agreed that the transport board was within its right to order a second hearing, but that side trip to the the Supreme Court chewed up another six months. In the meantime, our costs continued to mount and we were still without a licence. Who do you suppose profited from this delay? Only our competitors.

It had now been more than two years since our witnesses agreed to come to Toronto and tell the transport board that they needed a reliable, timely and reasonably priced small-parcel delivery service. Those people, especially the small businesses in remote areas of the province, were not happy. In any event, yet another half-year passed before we finally got our case back before the transport board.

The 50,000-page transcript from the original 110-day hearing was entered as evidence, we put on another 50 public witnesses and our competitors were also allowed to restate their case. Finally, on October 17, 1980, the board issued a decision which says, in part, "The board therefore finds that the applicant"—UPS—"has shown a need exists in this market and, further, that effective competition by the applicant is not possible while it has to operate passenger vehicles beyond urban zones."

So more than three years after we applied for a certificate of necessity

and convenience, the authority was granted. We would now be allowed to serve the entire province, and the minister quickly issued us licences.

As incredible as it may sound, the issue of the licences started another storm of protest from the Ontario Trucking Association and several of our competitors. Because our competitors had filed petitions with cabinet asking that the UPS decision be reversed, there were those who felt that the petitions should act as a stay, meaning that UPS should not be able to operate. We all went back to the Supreme Court of Ontario, and the Supreme Court concluded that a petition to cabinet does not act as a stay.

Now, at this point you might think that our competitors would accept the fact that the regulatory process, as slow, erratic and expensive as it was, had come to a final conclusion. It was clear that the board, the minister and the courts found no reason to deny UPS, with our features and lower prices, the opportunity to compete in the specialized parcel delivery business.

But hold on again; here comes the Ontario Trucking Association a year later. Because cabinet had not disposed of the UPS matter right away, the Ontario Trucking Association decided to keep the pressure on. In a letter, sent to every member of the Legislative Assembly immediately after the 1981 election, the OTA looked into its crystal ball and predicted a sad fate for our competitors, "Most will disappear."

Here we are, seven years later. Our competitors are better off than ever before. In fact, those of us that specialize in the small-package business have grown spectacularly. Not only that; the services continue to improve everywhere, including northern Ontario, where there were no small-parcel services before we were licensed.

As for prices, they have reached a level that shippers and receivers are willing and able to afford. It cost \$13.50 to send a 10-pound parcel from Thunder Bay to Toronto 10 years ago; today it costs \$3.29. That is a reduction in price of 75 per cent. That happens to be our price. We have competitors who can and do match it, and some who go below it. Any businessperson, and especially Ontario shippers, know it was effective competition that improved the service and lowered the prices.

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As for the bigger story, whether the licensing of UPS was to make companies "disappear," as the Ontario Trucking Association promised the Legislature in 1981, let's look at the facts.

We know that in 1976 there were, according to the OTA statistics in its own Ship-By-Truck directory, only 2,602 pieces of equipment carrying small parcels in Ontario. Last year, in the directory, that number has grown by 236 per cent to 6,128 vehicles. At the same time, some of our competitors sold their businesses for millions of dollars.

Now let's get specific. Purolator Courier, which appears to automatically have filed an objection against UPS whenever it knew we were applying for a permit to serve a province, had sales of \$96.5 million when we received our licence in 1980.

For the past eight years, Purolator has been competing with us right across Ontario, head to head. Has Purolator disappeared? On the contrary. By 1986 its sales had jumped to \$261 million. That is a growth in sales of 270

per cent, despite the fact that its prices have come down considerably so that it can now compete more effectively.

Canpar is another competitive service which has been using the regulatory process to delay increased competition with United Parcel Service. Have they disappeared? Hardly. In fact, Canpar has also done spectacularly well while competing at every doorway where UPS operates.

Canpar is a service division of Canadian Pacific Express and Transport. Here is its annual rate of growth since 1982: 32.5 per cent, 22.5 per cent, 22.7 per cent, 21 per cent and 28 per cent. That is not a disappearing act. In fact, Canpar has been doubling in size every few years; so have we.

Even Canada Post, with all of its problems of parcel damage and unreliable delivery, has been able to sustain good growth in the parcel business. Fourth class or parcel post has had more than a 10 per cent growth every year since 1982; and its special service, Priority Post, which competes directly with us and Purolator, has been growing at a rate of 16.6 per cent a year over the same period of time.

The point is that everybody is growing and no one knows how big the small-parcel business can be. The Ontario Trucking Association said in its letter to the members of the Legislative Assembly in 1981 that the business is "finite," that there are only so many parcels available. The implication was that if new competitors were licensed here, somebody was going to lose his business and be forced to close the doors. Does that sound familiar? Have you heard that in the last few days?

The OTA was dead wrong. The market is not finite. It is enormous and it is growing vigorously. How do we explain this unprecedented growth in specialized trucking services? It is not just a booming economy. The fact is that our entire economy is changing. Our transportation systems are becoming more and more sophisticated, reliable, far-reaching, fast and competitive.

Businesses are required to move things faster and in smaller quantities. Warehousing of some goods and parts is no longer necessary. Shipping costs are dropping dramatically. Distance and time have been overcome by thousands of international cargo airliners which fly all night.

Fifteen years ago, United Parcel Service was the largest private carrier in the world and it operated only in the United States. Today, UPS is the largest air cargo company in the world with plans to serve every address in 160 nations.

The reliable, timely and reasonably priced transportation of goods has become a global utility which should be available to every business, no matter how small, no matter how remote. Bills 87 and 88 recognize this phenomenon in the transportation industry and will ensure that Ontario businesses will have the opportunity to compete on a global basis if that is their ambition.

We at UPS urge you to consider the facts of our case and not to rely on those stale old predictions of gloom and doom. You can be of enormous service to truckers who want the opportunity to compete more effectively. You can also help their customers, the shippers, and provide relief to the shippers' customers, the consumer. All you have to do is move quickly to pass Bill 88 and its companion, Bill 87, as tabled by the Minister of Transportation, without amendment.

One last point: I am sure that a number of you are concerned that more competition might overwhelm small and medium-size regional carriers. In our experience, that has never been the case. We have learned time and time again that there are competitors who can offer services and prices and timeliness that we cannot touch; and more often than not, they are the smaller companies.

The reason is fundamental. A company our size, the largest employer of members of the International Brotherhood of Teamsters in the world, has a cost and an operating structure that simply cannot compete with a small local and specialized operator. As long as prices are based on actual costs of providing service, there will always be room for any competitor with a better idea for containing those costs and improving services to the shipping public, whose interests in both Bill 88 and the Motor Vehicle Transport Act of Canada are held to be primary.

Thank you for your attention. I will be pleased to answer any questions that any of you may have.

Mr. Chairman: Thank you, Mr. Smith. I am just debating in my mind whether you should try to turn this brief into an episode of LA Law or an Arnold Schwarzenegger movie. There is potential here.

Mr. Smith: There is not much sex or violence in it, but we could probably get some in.

Mr. Chairman: You could build that in.

On page 3 of your brief you talk about the number of pieces of equipment in your organization. It looks like an increase of about 25 per cent between now and October 15. Is that because you are overseas or is that Ontario? I did not know whether those numbers were based on Ontario or Canada.

Mr. Smith: That is all of Canada. Principally, as I said, we are granted authority in Quebec to serve on an extraprovincial basis. We have the plans to put the air service in on October 3, and a part of that increase is our normal fleet requirement that we purchase each year for peak season, which starts around November. That includes our total. Our total equipment budget for 1988, I think, was \$14.7 million in Ontario.

Mr. McGuinty: Thank you, Mr. Smith. I wish you had appeared in the afternoon at about 2:30 when it is so hard to keep awake after lunch. I found your brief fascinating.

I have a kind of lingering question. We have had a lot of briefs from truckers, dump truckers and truckers of all sizes. I certainly appreciate, and you put forth in a very convincing manner, your obliviousness to the impact of deregulation over your particular part of the trucking industry. I think it is one particular part of the trucking industry, and appropriately, that is what you are primarily concerned with.

I am wondering if that which applies to your industry and the circumstances within which you operate are quite the same as that which applies to other parts of the industry. For example, you indicate quite well that you dispute the idea that business is finite. With regard to your own area of operations, I think that is very true, because you state that your businesses are required to move things faster, in smaller quantities and so forth, and that warehousing of goods and parts is no longer necessary and so forth. There is that, which applies in a peculiar way to your own part of the trucking industry.

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There is another thing, which you alluded to in passing, that I think really has more significance than you attribute to it, and that is the growing disenchantment with the postal service. For example, my sons and their law firm can no longer trust the mail. People are more and more disenchanted with it. Businesses are more and more inclined to move towards it. I think that is a factor which has led to your growth as well.

I am wondering if your indifference to the implications of deregulation is because you can see only the good in it as it applies to your particular part of the trucking industry. That really applies to the other parts. We have had truckers here talking to us about the issue of reciprocity, truckers talking to us about difficulties in operating into the province of Quebec from Ontario and a host of concerns that I have found to be rather compelling and that do not apply to your branch. I appreciate your enthusiasm and your very compelling endorsement of it in the context of your area of operations applies, but whether or not it is widely applicable, I have some doubts.

Mr. Smith: There is no separate bill in front of us that covers just small-package operations; it is covering all the transportation.

Mr. McGuinty: That is right, I appreciate that.

Mr. Smith: I have a couple of comments. I do not know that we are deregulated, I do not know where everybody gets this misnomer that Canada is now all of a sudden deregulated. We now live under the Public Commercial Vehicles Act in Ontario. There is nothing in that act about deregulation on this date.

The first licences that came out under the federal act were issued in Ontario, I believe, about two or three weeks ago. You can confirm that. I picked up the paper this morning and read, "Transport Canada First Victim of Deregulation." They are never going to get the opportunity to be deregulated; they were history before it even came into play. When you talk about deregulation, this growth took place under a regulated environment, and within this regulation are many minor issues.

One, for example, is a bill of lading. This is a regulation that has been in effect, I think, since around 1935 or 1936. It has never been amended. It requires that every small shipment have a bill of lading attached and that the customer get a copy. We have not used bills of lading in the industry for 15 years, but each time you get before a justice of the peace on a claims dispute you are asked for the bill of lading. If it is not issued, the carrier is found guilty for not issuing a bill of lading. These are the things that this bill goes to correct, which need to be corrected for all parts of the industry.

Mr. McGuinty: The thing that focused my mind on your allusion to the business as finite is I have just come off the standing committee on administration of justice, dealing with Sunday shopping, the difference being that in that committee we wear a hard hat. The argument there is whether or not disposable income is finite. Thanks very much for your comment.

Mr. Pouliot: Thank you, Mr. Smith. I echo the sentiment of all of us. You write and deliver a text filled with sparkle.

Mr. Smith: I have had a long time to practise it.

Mr. Pouliot: That is right, at some cost. If patience is a virtue, indeed you border on sainthood. May your future lie ahead of you. You are very determined. You could not resist, though, taking a shot, a poke, at the much maligned postal service. I want to say that, with all the sincerity at our command, Dr. Morin-Strom and myself, we had many fine brothers and sisters—not that Mr. Parrot or his predecessor, Mr. Davidson were our role models—but nevertheless, are working very hard providing an essential service. And I can attest personally to the good quality of service from Canada Post. In my 46 years, I have never failed to receive a bill from creditors, and believe me, I have them all. I try to be very spartan and frugal and I am obviously of modest means, however, they always reach me on time. This will attest better than anything as to the quality of the postal service.

You have mentioned on page 5 of your—not page 5—

Mr. Smith: Actually, if I might interrupt. I would say I think the postal service is improving. As a competitor, I would say that. I can say that ten years ago it was dismal. But I believe they really have woken up to the fact that they need to compete if they are going to survive. I see them desperately trying to make changes and making some. So, I think there is some hope for Canada Post.

Mr. Pouliot: I am not quite clear. I have only been here since 1985 and again, obviously, I need all the help I can get. Maybe you can help me, Mr. Smith. When you mention that in 1981 you petitioned cabinet. Does that mean lobby?

Mr. Smith: No, it was the—well, it was a pleading, I guess you might say, to the Lieutenant Governor in Council which was a provision of the act. There were two appellate processes. One appeal was directly to the courts and then you could appeal directly to the Lieutenant Governor in Council by way of petition to have, I believe the wording was to have a decision overturned, varied or amended. But that was the sum and force of it. One is a political route and the second is a judicial route.

Mr. Pouliot: Political route. I see. I guess there is a difference between a vulgar trade and an honourable profession—it is all in the method, I guess—when it comes to lobbying. Okay.

I hung on every word when you described the horror show that represents, really, government at its worst. No one should have to be penalized to the tune of years of agonizing for the right to the marketplace to deliver an essential service. You have no reason to mislead. Far from it. Yours is a horror show, sir. I am an opponent of what is being proposed. And incidentally, the minister has referred to it—let's not play with words—as deregulation, but it was just like pulling teeth; we had to numb the patient. And sometimes ministers are immune because they are very well protected, but he submitted that it is deregulation. The Financial Post says so; they do not contribute to my campaign. The Globe and Mail says so. We do not have the Toronto Sun. I guess they will appear under a different heading. But the Toronto Star says it is deregulation, and you have said, "Well, pictures of gloom and doom." Frank Miller said that about us and they are still looking for him. Anyway. Hansard, are you listening? A transport group becomes victim of deregulation.

Mr. Smith: The furthest thing from—

Mr. Pouliot: Two thousand people lose their jobs, Mr. Smith. You are the largest employer of fine brothers and sisters belonging to the beloved Brotherhood of Teamsters.

Mr. Smith: That is correct.

Mr. Pouliot: That is right. Well, I have the brief of the Brotherhood of Teamsters right here. They take a directly opposite view of what you are saying. But more importantly, you welcome more competition. You have been through it yourself.

Mr. Smith: Yes.

Mr. Pouliot: You think you are innovative, you are imaginative, you have the gusto that will allow you to go out and compete in the marketplace.

Mr. Smith: And if anybody can do it better than we can, I want to know about it because I want to know how they do it.

Mr. Pouliot: Yet, at the present time—and again, at the cost of moving, it moves quicker, it moves faster, more sophisticated, better service at a lower cost. So, it is highly competitive as is, is it not?

Mr. Smith: Not as competitive as it can be, but it is competitive.

Mr. Pouliot: Do you think there is still room for improvement, do you think so openly?

Mr. Smith: It is incredible what is out there. Absolutely.

Mr. Pouliot: Candidly, Mr. Smith—my last comment and question if I may, Mr. Chairman—why do you believe regulation was put there in the first place? Now, for instance, we have the Ontario Chicken Producers' Marketing Board. That is highly regulated. I can buy 10 cows but I cannot sell one quart of milk.

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Mr. Smith: I have no idea. I probably was not alive when regulation started, more than likely. But we have lived under it.

Mr. Pouliot: Because time and time again you refer to small communities in northern Ontario. The riding that I represent is—Mr. Chairman, you will be interested in that—is 114,000 square miles. It covers 51 communities and it extends to Fort Severn in Hudson Bay. It is 1,100 miles long. And I do not see better than anyone, but I can certainly readily acquiesce the need for competition and to have access to that essential service.

About one year and a half ago, the airlines were deregulated. As a result of mergers and takeovers, we do not have more airline carriers now. We have fewer. I fly 100,000 miles per year—in excess of that—and I can tell you—I am not the one saying this but one can check the facts—that we have fewer routes operating and we have fewer airlines and yet, we have had deregulation.

Mr. Smith: You see, that has not been our experience. In the United States, five years ago we did not own a plane. Now we own 106. We lease 250

other ones per day. Deregulation for us allowed us to get into the air overnight in the package delivery business. It now, probably, is at least a \$2 billion or \$3 billion per year business. So, in our instance, it did not hurt us in any fashion, and we think it helped the consumer in terms of at least his freight cost.

Mr. Pouliot: I must say in closing that I have admiration for you, sir, and I want to wish you well. You drive a very convincing argument. In view of what you say in your case, I have no argument and I have to agree with you 100 per cent.

Mr. Smith: Well, I think one thing to add to that is this is not the end. I mean, this is now going on in nine other jurisdictions. I am looking for Ontario to be the leader to come forward and say, "Let's put an end to some of this stuff."

Mr. McLean: What is the population of your riding? I missed that.

Mr. Chairman: Do not ask him. You did not mention, Mr. Pouliot, that a few of those 100,000 miles you fly are actually in Ontario. Mr. Morin-Strom.

Mr. McLean: I was waiting for him to tell us the size of the population.

Mr. Morin-Strom: The presentation, Mr. Smith, is an excellent one.

Mr. Smith: Thank you.

Mr. Morin-Strom: Certainly, this is a horror story beyond belief. I have not seen something like this in my experience here in terms of the government bureaucracy being as far out of control as in your particular case. I do not think anyone can argue that there were serious problems and there are serious problems as long as we still have the present law in effect and that law did require some major overhaul. The issue is how to overhaul it and where we should be going from where we were with a law that was over 60 years old.

In the introduction to your brief, you say that the United Parcel Service Canada Limited is owned by its managers. Then, two lines farther you say, "In the United States, the parent company..." I wonder if you could clarify what in fact is the relationship between UPS Canada and the parent company and how the ownership, in fact, is split between the parent company and the Canadian owners?

Mr. Smith: I would be happy to. The parent holding company is a company called United Parcel Service of America Inc. That company, 100 per cent, holds all operating subsidiaries in all the countries we operate in. So, it truly is a complete holding company.

Any manager or supervisor of United Parcel Service worldwide is eligible to become a member of what we call our stock ownership plan, either he or she. All of the profits of United Parcel Service's operations are consolidated and shares are issued in the parent holding company. So, any one of the 200 Canadian managers or supervisors I made reference to is a stockholder in the parent company and not the subsidiary operation. They gain the benefit of the whole worldwide operation. They are not limited to having stock ownership in just the Canadian operation, if that answers your question. All operations are owned by one common parent and that stock is then distributed among about 18,000 managers and supervisors.

the sole owner of the seven subsidiary firms, as you state, is owned by Canadians?

Mr. Smith: There is no ownership owned by the company; it is owned by the managers and supervisors.

Mr. Morin-Strom: What percentage of the company do those managers and supervisors in Canada own?

Mr. Smith: It is 200 over 16,000 or 18,000. That will give you the percentage.

Mr. Morin-Strom: So it is a little over one per cent.

Mr. Smith: Yes. I would say the volume of business that we handle in Canada as compared to the worldwide operation is maybe two per cent or three per cent. It is 70,000 over 11 million.

Mr. Morin-Strom: The ownership is one manager, one share?

Mr. Smith: No. A manager is eligible to own stock, but all managers do not own the shares equally. It is based upon their years of experience, how long they have been a manager. Very simply, each year UPS takes 15 per cent of its profits worldwide before taxes and distributes that to the managers and supervisors in shares of UPS stock. If we have a very good year in 1988, we will all get more ownership or equity in the company. If we have a very lean year in 1989, we would get less equity. If I am in the company 30 years as an employee, I am going to have more equity than a person who was hired yesterday or made a supervisor yesterday. The largest single share owner is a private foundation, but no one owns more than five per cent of the UPS stock, no single voting block. It is really widely owned.

Mr. Morin-Strom: You say the owners are the managers, but the largest single one is a foundation. How does a foundation become a manager?

Mr. Smith: Jim Casey, who was one of the original founders in 1907, took his shares when he died about five years ago and turned all his holdings into a charitable foundation called the 1907 Foundation. It is now one of the largest foundations in North America.

Mr. Morin-Strom: So there is not the principle that the shares, on leaving UPS or on death, have to be sold or returned to other managers? -

Mr. Smith: In 1936, that was implemented, but Jim started in 1907; so his early shares went to a foundation. There was no provision for UPS to have the first right of recall on those shares.

Mr. Morin-Strom: We are getting off the tangent here. The basic point is we have firmly established that this is an American company with very little Canadian interest in terms of ownership of the company.

Mr. Smith: No. What I am representing here today is a Canadian company under an Ontario charter which does 100 per cent of its business in Canada. That is who I am here to speak on behalf of. It happens to be owned by an American parent company, but we are talking about Canadians in Canada, nearly 2,000, who have no ties to the US other than possibly some shares of stock and some direction occasionally. If you have deregulation or reregulation, whatever you want to call it, these people's jobs are not going to Mississippi. They are in Canada, serving Canadians, doing the job they are

doing. When you start talking about the border wars, it has nothing to do, in my view, with the part of the industry that I am in.

Mr. Morin-Strom: Have you ever had a problem getting operating licences in the United States?

Mr. Smith: Yes. As a matter of fact, Texas took 23 years. We could write another horror story about Texas. Texas was a real challenge to United Parcel Service. We only got it in 1976.

Mr. Morin-Strom: I think this is leading into the fact that a lot of the trucking firms in Ontario have testified before us that they—maybe not the scope of the kind of problem you faced in getting your operating rights here in Ontario—have had similar kinds of problems in getting operating authority in other jurisdictions outside of Ontario, in particular in some 43 of 50 states in the United States. One of the main principles here which this bill does not address is any type of equity in terms of fairness, in terms of providing those kinds of operating rights.

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American carriers are going to gain an unfair competitive advantage to compete in our marketplace by getting virtually wide-open access to operating authorities in Ontario. The Ontario Trucking Association and trucking firms that want to have the right to compete in the United States would like to have the assurance that they would have the same right to compete in American states as we are proposing to give to American firms coming in here. They have not been arguing that firms established in Ontario should not have the right to operating authorities; they want to see some type of reciprocity.

Given the kinds of problems you have had in terms of getting those kinds of operating authorities, do you not think it would be a wise move for the Ontario government to pursue a reciprocity provision that would put pressure on other states to relieve those kinds of problems you say caused you 23 years of hardship in Texas, for example?

The question this all leads up to is that you say you endorse these bills in total. Do you not recognize that they are creating an unfair competitive advantage? Do you not think we could do something to fix up these bills?

Mr. Smith: First of all, I do not think it is an unfair competitive advantage. Second, the OTA says it is difficult to get authority in 43 states. I would like anybody to name me a carrier who has made application in 43 of those states. He can come before this committee and say, "Here is the problem I had and the reason I was denied." I do not think that has been done. It makes a nice argument about reciprocity and a few other things, but I do not think that is really what has happened.

Nothing would have prevented Texas—the problems we had in Texas—to have any reciprocity agreement with Canada or China or any other place in the world. It was a very tough political problem in Texas. All the trucking rights were owned by the Texas Railway Commission, which wanted no competition for the railway. It took 23 years and six trips to the United States Supreme Court to get operating authority. I do not care what you do with reciprocity; you would not solve that particular problem.

With respect to unfair competitive advantages or disadvantages, if nobody can get into any one of those 43 states, how can it be unfair? Is that

not level? You have heard about level playing fields. I particularly do not buy the argument that we have that problem.

We have it in Canada. I filed an application for inter-operating authority in Quebec in February 1987 and it still has not been set for public hearing yet. I filed one in Saskatchewan under reregulation and public interest that has not been set for a public interest hearing yet. In Manitoba, it has not been set for a public interest hearing yet. Maybe I should be asking for reciprocity in Canada.

My personal view is that is a red herring. That is my personal impression. There are states that are more difficult than other states. I agree with that. There will be provinces in this country that will be more difficult than other provinces. Manitoba has already told us that. Manitoba will be regulated for the next five years if you listen to their chairman, Mr. Norquay, who has said that in public statements.

I do not think it is a problem. That is my own personal opinion.

Mr. Morin-Strom: You do not see that you are reflecting the viewpoint of an American firm that already has the access and the operating rights to operate in all 50 of the United States and has had the wherewithal to pursue the kinds of lengthy process you did to get that access in Ontario. But Ontario firms do not have that kind of size to be able to win those kinds of equivalent licensing accesses back into even the neighbouring states of Ontario.

Mr. Smith: To get a full interstate operating authority in the United States now costs around \$25 or \$50, I think. That is the extent of it. If you want to go from California to Tennessee, all you have to do is file and you ought to have it within weeks. If you want to go between two points in Tennessee, if you require that kind of a move, you may have to go before a public utilities commission. When we talk about 43 states, they vary. For example, I will just take rates. If we want to increase our rates, there is a lot of jurisdictions that have rate regulation.

I would say in probably 35 of those 43 states it can be done by a telephone call. That is the extent of the regulation. In a couple of states, we have to appear and put on a rate case. California is one. You must go before the public utilities commission there and put on a rate case and justify your rates. It is going to vary between states, and I do not think any degree of reciprocity in terms of entry is going to stop it. It did not stop us.

Mr. Miller: I think perhaps the question has been answered. I was concerned about the fact that some states are demanding payments. When our truckers go over there, they have to pay. When they come over here, they do not seem to have to pay. It seems that would be unfair. I suppose they are trying to protect the industry the same as our dump truck operators who have been before us.

How do we break that barrier in those states to give the same opportunities? Would you have any advice along that line?

Mr. Smith: I think if a trucker in Ontario made application to any state in the 48 in continental United States for operating authority and was denied, he ought to have the availability to come back to any member of this Legislature and have this Legislature go to bat for him, whether that is by a telephone call to a governor. I do not think you can do it through regulation. I think the pressure ought to come from the Minister of Transport. Nothing

prevents him from saying: "Hey, look, we sent somebody down to Alabama. The guy put on a case, as we understand it. There is no reason for him to be denied. Why would this have happened?" I think that is the route to go. I do not think a regulation would change it for you.

Mr. Miller: The other comment I would like to make is we have been around the Legislature when you were trying to get that licence and it was a concern expressed by many members how it was going to affect Ontario. I think the report you have given us this morning indicates it has been a benefit and more so than the other way around.

Mr. Smith: I appreciate that. I think that was one of the purposes, because many times you only get what you are sent. I thought there was another side to some of the gloom and doom we heard in 1976 and 1977. It was on the front pages of the Globe and Mail and the Toronto Star: "UPS Destroys All Its Competition." I have the files.

Mr. Miller: I guess it is a matter of us having to change society today and I guess that is what we are dealing with right here too.

Mr. Smith: One comment. This does not get etched in stone. I would hope these regulations and bills have some fluidity to them. There is always the opportunity to come back, open up the book and say, "Let's re-evaluate." In my view, to keep going year after year, as I mentioned on the bill of lading issue, I would like to see it sometimes stopped and say we do not have to use a bill of lading for a shipment under 50 pounds or 70 pounds, because in reality we have not been doing it for the 12 years anyway that I have been here. I do not know that anybody has been harmed. I guess that is my comment.

Mr. Chairman: Mr. Smith, thank you very much for your presentation to the committee. It has been most lucid and enjoyable.

Mr. Smith: Thanks for your attention.

Mr. Chairman: This afternoon we have a regular session. Tomorrow, as you know, we are going to Sault Ste. Marie. We are very nervous, not about the reception we will get in the Sault, but the timing with the problems at the airport with one of the runways. We may be running behind schedule, and it is really a jam-packed day in the Sault tomorrow. I thought it would be best to mention here, rather than there, so that we do not ruffle any feathers of presenters in the Sault, that we may have to be really tight on time and questions and all that. That would be the only reason, though, because I am nervous about getting into the Sault on time and getting out of there on time to catch the plane back.

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Mr. McGuinty: Are you going to retain control?

Mr. Chairman: Yes, that is right, but I will need your co-operation to do that. We did try and book overnight in the Sault, go there tonight and stay over, but there is a big convention of something on there.

Ms. Kelch: Criminologists.

Mr. Chairman: Criminologists, yes. I am not too sure I want to spend overnight in the Sault with the criminologists there anyway, so we will fly there and back the same day.

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STANDING COMMITTEE ON RESOURCES DEVELOPMENT

ONTARIO HIGHWAY TRANSPORT BOARD AMENDMENT ACT
TRUCK TRANSPORTATION ACT

WEDNESDAY, SEPTEMBER 14, 1988

Afternoon Sitting



STANDING COMMITTEE ON RESOURCES DEVELOPMENT

CHAIRMAN: Laughren, Floyd (Nickel Belt NDP)

VICE-CHAIRMAN: Wildman, Bud (Algoma NDP)

Brown, Michael A. (Algoma-Manitoulin L)

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McGuigan, James F. (Essex-Kent L)

Miclash, Frank (Kenora L)

Miller, Gordon I. (Norfolk L)

Pouliot, Gilles (Lake Nipigon NDP)

Wiseman, Douglas J. (Lanark-Renfrew PC)

Substitutions:

Beer, Charles (York North L) for Mr. McGuigan

McGuinty, Dalton J. (Ottawa South L) for Ms. Collins

McLean, Allan K. (Simcoe East PC) for Mrs. Marland

Nicholas, Cindy (Scarborough Centre L) for Mr. Miclash

Clerk: Mellor, Lynn

Clerk pro tem: Arnott, Douglas

Staff:

Richmond, Jerry, Research Officer, Legislative Research Service

Witnesses:

From Haldimand-Norfolk Trucking Companies:

Baird, Peter, General Manager, Canadian Freightways Eastern Ltd.

McBurney, Keith, President, McBurney Transport Ltd.

Smith, John, Secretary-Treasurer, Bruce R. Smith Ltd.

Slack, Randy, General Manager, Slack Transport Ltd.

Cronkwright, Jim, Executive Vice-President, Cronkwright Transport Ltd.

From the Ministry of Transportation:

McCombe, C. Jeffares, Director, Office of Legal Services

From General Cartage and Express Co. Ltd.:

Moore, Ross D., President

From SLH Transport Inc.:

Marshall, Scott, General Manager

Remedios, Eric, Manager, Transportation Services and Sales Development

AFTERNOON SITTING

The committee resumed at 2:08 p.m. in committee room 1.

Mr. Chairman: We have a busy afternoon ahead of us. The first group is trucking companies from the ridings of Brant-Haldimand and Norfolk. Did I pronounce that correctly, Mr. Miller?

Mr. Miller: That is exactly right. You covered all the bases. We are pleased to have them make a presentation this afternoon.

Mr. McGuinty: Is that in Ontario?

Mr. Miller: That is in Ontario. Most of these companies started from scratch. They built themselves up. Trucking is big business in Brant-Haldimand and Norfolk.

Mr. Chairman: I do not know who the spokesman is. Is it you, Mr. Baird, for the group? We welcome you to the committee. It is good to see some familiar faces in the group.

HALDIMAND-NORFOLK TRUCKING COMPANIES

Mr. Baird: If I could, I would just like to take a moment. For the convenience of the committee, I had some name tags brought up. In case there are some questions, you will know who is who. On my far left, Jim Cronkwright, executive vice-president of Cronkwright Transport Ltd. Next to him is John Smith, secretary-treasurer of Bruce R. Smith Ltd. I am general manager of Canadian Freightways Eastern Ltd. Randy Slack is general manager of Slack Transport Ltd. Keith McBurney is president of McBurney Transport Ltd.

I would like to give the committee just a little background on how we came to be before you today. One of the things that we are constantly told as business people is that we do not perhaps keep our members informed both at the provincial and the federal level as to things that occur and what is happening around us and how we see those things occurring. So we have got into a situation where from time to time we will have an informal meeting with two members out in our local area: the Treasurer, Bob Nixon, and our member, Gordon Miller. It was at the last one of those meetings that we were apprised of the committee hearings, and it was suggested that perhaps rather than just talk to Mr. Nixon and Mr. Miller, we should come down and make our views known to the committee.

I would like to suggest to you that some of us are appearing before a committee of this nature for the first time. We have come with two thoughts in mind: One is to tell you a little bit about us; the second is to be honest with you and, in being honest with you, to offer you what we consider to be our opinions as we see the situation from our operating businesses. We are not suggesting for a moment that our opinions are totally right, but they are nevertheless opinions. When you live in a democracy, you are entitled to your opinions.

If I could direct you to start at appendix A, which is partway through the brief, I would just like to make a few comments on the companies that are represented here today to give you a bit of a flavour of what they are all about. The first one in my folder is Slack Transport. W. R. or Bob Slack was planning on attending today. However, since it is a family business, there were some business things that had to be looked after. His son Randy, the general manager, is here with us.

As you will see by the appendix, the company started in 1946 and expanded in 1961 by purchasing more operating authority, allowing a wider operating authority throughout Ontario. It also allowed them to establish one large shipper as a base to get us all points throughout Ontario, and they continue to expand their operating authorities over the years through purchases and applications to the Ontario Highway Transport Board.

In 1978, its major shipper expanded its sales area to the United States. It again applied for more operating authorities between Ontario and the US, and it has expanded steadily since that time, with the largest percentage of its business now being between the US and Ontario.

It gives a brief description of the type of commodities they will haul: lumber, Gyproc, some named shipper products, mostly brick, and building materials. They have, including employees and owner-operators, 231 people employed. They have 110 company and 46 owner-operator power units, 231 company trailers and eight on lease. It talks about their miles in 1987 of 11.5 million, their provincial fuel tax payments of almost \$500,000, provincial sales tax of \$300,000 and wages disbursed in 1987 for company employees and owner-operators of in excess of \$8 million.

The second page talks about things they do in the community, about tractors and trailers available at no charge to local service clubs, schools and organizations for parades and stages of various events. They sponsor many sport teams, etc.

In summary, Slack Transport says:

"Our company has grown by the rules and regulations of the transport board. We used profits to purchase (or apply for) more authorities as we could afford to do so. Our growth has been limited in a sense by the rules and regulations, but on the other hand, our business and heavy investments have been protected by these same authorities. Our profits have always been shared with the employees or fed back into the company showing a rapid growth rate over the past 15 years."

Slack is one of the companies that currently is encountering some problems with the United States, with franchise taxes; and, time permitting, we will get into that a little later on.

In summary, "We find it difficult to understand why a family-built and run business like our own should be further placed in jeopardy by the same government that fights so hard to get new industry into Canada and to keep older industries here."

That is the brief submitted by Slack Transport. What I would like to do is to go through this and then allow the committee time to respond with questions.

The next is Bruce R. Smith Ltd. John Smith, the president of Bruce R. Smith, is here today. It gives you a brief history of the company. Commodities handled: steel products, foodstuffs, dry freight, bulk lime and bulk grains in Ontario, Quebec and the US. It has 194 employees. You will see listed below the types of equipment they have and you will see the variation: 95 vans, 60 five-axle trailers, 25 tandem flat trailers, seven dump trailers and their power units. They travelled 5.7 million miles. Fuel taxes were \$450,000. Wages were \$4.5 million. Attached to that is a couple of pages that the Smith people have prepared about the history of the company.

"Since its inception, in 1947, Bruce R. Smith Ltd. has clearly made its niche in the trucking industry. Starting out as a local milk hauling operation, Bruce R. Smith has expanded and diversified extensively becoming a leader in today's trucking industry.

"The basis of the company's success lies with a thorough understanding, adeptness and the superior level of service achieved in each marketplace before another venture was embarked upon. This fact is especially pertinent to the larger acquisitions that were made in more recent years.

"Having its roots in milk hauling, Bruce R. Smith's service expanded in 1959 with the acquisition of Ronson Transport. It was through the Ronson purchase that a strong agricultural base was gained and an affiliation with a major fertilizer bag and bulk operation was created. Bruce R. Smith thus has become instrumental in the agricultural growth and development of the Haldimand-Norfolk region.

"After spending a number of years as an agriculture-oriented business, emphasis was turned toward the industrial sector when in 1974, Gilmour Transport was acquired. The purchase of Booth Transport Ltd. in 1982, which included all equipment and licensing, expanded operation beyond Ontario into Quebec and the USA. This movement into the industrial sector was a milestone in Bruce R. Smith's history and the business grew in leaps and bounds from this point onward.

"Due to its highly diversified nature and service level, Bruce R. Smith is able to cater to local, national and international customers equally well.

"These veterans of the trucking industry are able to service customers, old and new, large and small."

There is also a piece I will not read into the record but to which you may want to refer with regard to economic transportation in the riding of Haldimand-Norfolk and how Bruce Smith sees it.

The next is Verspeeten Cartage Ltd. Ron Verspeeten was to attend with us today, but again, it is a family business, and two of their major customers wanted to see them—one in Michigan and the other in Quebec—so Ron ended up going to Michigan and his father ended up going to Quebec; that is why they are not here today. But we would like to share what they have had to say.

"Verspeeten Cartage Ltd. is a family-owned and operated business, founded in 1952 with one truck by Archie Verspeeten.

"Our company commenced business as a licensed carrier in the fall of 1957, when we were granted a class D authority by the Ontario Highway Transport Board to carry agricultural and farm-related commodities for our immediate area.

"In the past 31 years our authority has been expanded by purchasing existing businesses or by way of application.

"Today our fleet moves a variety of commodities, including bulk, manufactured goods, automotive parts, tobacco both manufactured and unmanufactured, serving points in Ontario, Quebec and the United States.

"Presently our company employs 30 people from our immediate area with a payroll in excess of \$2 million..."

"Presently our company operates 204 pieces of equipment" to travel 3.6 million miles. It talks about fuel taxes of \$100,000 and sales taxes.

Next is McBurney Transport Ltd. It is represented by one of the founders, the president, Keith McBurney.

"In 1938 we, John and myself," being his brother, "bought the company from our father by McBurney Brothers which consisted of two trucks. In 1966 the company was limited and called McBurney Transport Ltd. Since this time we have grown steady by purchasing other carriers and by receiving more authorities from the OHTB.

"Our main commodities are sheetrock for structure building, explosives for all explosive industries and prefab boxes for TDS in Hagersville. These make up 60 per cent of our business and the balance is general freight. Our main hauling is from and to points in Ontario although we do haul from and to the USA, Quebec and western provinces."

He gives an indication of his number of employees, his power units and trailers, 7.3 million miles travelled, and the wage package, taxes paid, etc. Again, wages, including those of owner-operators, are over \$7 million.

Cronkwright Transport Ltd. is represented by Jim Cronkwright, a third-generation member of his family's trucking business.

It is a truckload carrier, hauling a wide range of general commodities within the province of Ontario along with a small base of international business. Elgin Cronkwright, grandfather of the current owners, commenced operations with one truck in 1917.

It has grown to meet the needs of Ontario shippers and today employs 236 people operating 581 pieces of equipment. It has terminal locations in Simcoe, Brantford, Hamilton and Toronto, and trailer drop locations in Chatham, Nanticoke and Whitby. It has travelled 6.9 million miles, paid fuel taxes in excess of \$700,000 and paid wages in the order of \$6.6 million.

Canadian Freightways Eastern Ltd. is the company I am employed with. You might be interested in knowing that we have got together basically because I live in Cayuga, which is in the riding these fellows operate in, and I have known them since I was raised. As a result of our getting together and our meetings with our Treasurer (Mr. R. F. Nixon) and Gordon Miller, I came here today with them to help in presenting this brief.

"CFEL is part of the Canadian Freightways group of companies involved in transportation, distribution, warehousing, air freight and customs house brokerage operating from British Columbia through to Quebec. Commencing operations in 1935 as Crawford Cartage, with various companies being added, Canadian Freightways purchased Hanson Transport Ltd.," the successor to the original group. It has got terminals in London, Kitchener, Hamilton, Niagara Falls, Toronto, Barrie and Buffalo. It employs 208 people with 223 pieces of equipment.

We are totally different from the other gentlemen at the table here today in that they are mainly involved in the movement of truckload traffic, and my company is mainly involved in the movement of less-than-truckload traffic. We talk about the miles travelled, the taxes, etc., and there is a little information on what Peter Baird does in the industry and in the community. That is to give you some idea of the support I get from our company to give to the industry and to give back to the community.

That gives you some idea of where we are coming from on those situations. If I could, I would now like to go to the brief. I realize that we did not start right at two o'clock, so I hope the chairman will be good enough to give us some time.

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Who we are: Carriers from the provincial ridings of Brant-Haldimand and Norfolk are pleased to have this opportunity to make a submission to the standing committee on resources development on the proposed trucking legislation contained in Bill 87 and Bill 88. Attached for your review, in appendix A, we have included individual statistical profiles. In summary, we would like to bring to the committee's attention some statistical information surrounding the activities of the carriers attending today. These companies, which are based in the communities of Caledonia, Delhi, Hagersville, Simcoe and Walsh, made the following contributions.

It is interesting to me, Mr. Chairman, and I hope to your committee, to take a look at a small community like ours and see that the companies here are employing almost 1,100 people, put in excess of \$28 million in wages back into the local economy, operate over 1,900 pieces of equipment, pay federal and provincial fuel taxes of \$2.8 million and provincial sales taxes of \$795,000, of which \$600,000 was for new equipment, and, finally, deduct \$3.8 million in income tax on behalf of their employees.

The histories of these firms, as outlined to you in the individual profiles, show that in response to their customers requirements, and in concert with existing regulations, they have, through second- and third-generation families, grown dramatically since their inception. They have made and continue to make significant human and financial contributions in the form of jobs, wages, taxes and services to the members of their local and provincial communities. In addition to their human and financial contributions, you will note that these carriers make a significant contribution to the social wellbeing of their communities through participation and involvement in community and charitable events.

From the outset we would like to highlight to the committee that these carriers are predominantly involved in a specific segment of the trucking industry, that being the truckload sector as opposed to the less-than-truckload sector. This is an important distinction for assessing the overall impact of Bill 88 on these carriers. The reasons for making this distinction will become more apparent as we proceed.

Some of the carriers here today are members of the Ontario Trucking Association. However, all of the carriers are aware of the points raised in the OTA brief and are supportive of that position. None the less, we would like to assist the committee by providing some additional comment on the points raised by the Minister of Transportation (Mr. Fulton) in his presentation. We feel that additional discussion of his comments is warranted in order that you may fully understand how this legislation will impact upon this important industry. To do this, we thought we would reiterate some of the points raised by the minister and then provide our response.

In his submission, the minister stated that there is a steady growth in the trucking sector and that in 1987 alone commercial vehicle registrations grew by more than five per cent. The question is, does this mean that there is no impediment to entry under the current system, because of the growth in commercial vehicle registration?

The minister has said that the government of Ontario has a duty to make sure the regulations under which the carriers operate are responsive to the needs of shippers, operators and, of course, ultimately the Ontario consumer. He says that relaxed market entry requirements proposed by Bill 88 and the resulting greater competitiveness in price and service are crucial to Ontario's manufacturing and industrial base in its effort to compete, particularly in the international marketplace. The statistical information we have provided shows ample evidence of how these carriers from these small communities have grown from very humble beginnings to be sophisticated, responsive carriers of freight.

We would emphasize that this growth has occurred during, and perhaps as a result of, the responsiveness of the existing regulatory system. We also believe that these data should indicate that the encouragement and growth of both local and specialized carriers which the minister wishes to see have already occurred and continue to develop.

As we are sure the committee is aware, the trucking industry is a service industry. In any service industry, the providers of the service must be prepared to be able to meet their customers' requirements in both service and price. On the basis of their growth, the carriers represented here today believe that they are able to demonstrate this as a result of their tenure and continuing development in the business.

We respectfully point out that there has been no rate regulation in place for some time. Carriers are free to file the rates they feel are compensatory and will attract the business. In the truckload environment, there is always the option that the shipper may place his own truck on the road, moving his own products. As a result of this, we have to be very sure that we are price and service competitive.

We also respectfully point out that the truckload carriers here today could be greatly assisted by the government if a review were undertaken concerning depreciation rates, fuel tax and sales tax as they relate to the carriers' ability to be price competitive with other modes of transportation as well as with carriers from other jurisdictions.

We believe that carriers, manufacturers and consumers want a dependable trucking industry, and this can be attained only when all of the parties are able to survive in these very competitive times. We are aware of a survey of shippers' satisfaction with various aspects of trucking services that was conducted by the ministry in 1986. The results of that survey of almost 2,000 shippers in Ontario indicated the following: 94 per cent of the shippers were satisfied with the equipment availability of Ontario's truckers; 94 per cent were satisfied with the timeliness; 88 per cent were satisfied with loss and damage protection, and 83 per cent were satisfied with freight rates.

In reviewing the demise of Maislin Transport, as well as the current position of Transport Route Canada—and the papers have been full of that lately—one of the major factors contributing to their problems was and is the inability to get price increases to offset rising operating expenses in these very competitive times.

The minister has said that Bill 88 will provide the opportunity for more local involvement in trucking in remote areas, which in turn will create the potential for better service and lower transportation costs. Again, we believe that carriers such as ourselves from the small communities previously mentioned demonstrate the growth, price and service that is, has been and continues to be acceptable to their customers.

The minister has stated that the people of Ontario, in the absence of price and service innovation, have typically paid inflated prices for consumer goods and services. We have difficulty understanding this statement based on our day-to-day experience in the current marketplace. Most of us are having extreme difficulty getting the rate increases that are necessary for us to meet our current and rising operating costs. We would sincerely like to know what evidence the minister has on which he based this statement.

In his submission, the minister has emphasized the government's efforts at maintaining safety standards under deregulation. While we applaud the government's recent efforts concerning this area, we must emphasize that regulation without full, proper and even enforcement of safety regulations is not satisfactory. We remain concerned that the new resources being added by the government to safety enforcement—and rightly or wrongly, we understand that to be 30 new officers—may be inadequate to meet this challenge.

The minister has stated that if a US carrier gets a licence to operate in Ontario, federal customs and immigration restrictions force him to operate that licence from Ontario. We believe the minister has been ill advised with respect to this statement. For one, federal customs rules allow a US truck to make a point-to-point movement within Ontario when that movement is directed towards the border. These have been called incidental moves, but this is a misnomer. In Ontario, these are the bread-and-butter movements.

More important, however, is that there is no effective enforcement of these immigration laws in Ontario. While we support the minister in his efforts to deputize ministry enforcement staff to enforce the immigration laws, we are highly sceptical as to whether in fact this will occur. We know that the ministry attempted to do this in 1987 and was turned down by the federal government. This industry cannot wait the one or two years that it might take for this to become a reality.

Furthermore, the minister has said that a US carrier would scarcely be effective conducting an Ontario business of this nature from another jurisdiction. We would, however, respectfully point out that, from our experience, given the current Motor Vehicle Transport Act, the act to deregulate federal undertakings, together with the implementation of the Truck Transportation Act, it would become very easy for a non-Ontario resident to operate an extraprovincial, as well as an intraprovincial, undertaking from outside Ontario.

We have seen examples in the US in which some of the major truckload carriers can service all of the US and the provinces in Canada on an extraprovincial and interstate basis from one central location in one central city. We therefore dispute the minister's statement and believe it would be possible to service the Ontario marketplace with the bulk of the resources being located outside the province.

As a matter of interest, some of the truckload carriers represented here today have reviewed the desirability of moving their operations to a US location to take advantage of the lower depreciation rates and cheaper fuel which are afforded the US-based carriers at the present time. We emphasize, however, that they have only investigated those options as part of an effort to ensure the future of their companies.

The minister has indicated that the government of Ontario may provide incentives to US carriers to set up business in Ontario. Surely it would be more beneficial in serving the public interest if the government of Ontario

would explore ways to make the Canadian tax system with respect to depreciation rates, fuel taxes and corporate tax rates more competitive with the US and to provide for compensation for the loss of value of operating authorities to Ontario carriers, rather than to provide incentives to foreigners to set up shop in this province. Bill 88 will have no impact as far as increasing the amount of freight available to be hauled is concerned. Consequently, by providing incentives to US carriers, the only thing that would be accomplished would be to replace Ontario management employees with US management employees.

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We also have to wonder what kind of signal the government of Ontario is sending out. On the one hand, we see legislation dealing with nursing clinics, water, and most recently, energy, as well as relief to the wine industry, which clearly demonstrates a Canadians-first policy; then, on the other hand, the government makes the Ontario trucking industry the sacrificial lamb.

The ministry has suggested time and time again that a reciprocity clause would be unconstitutional. While we do not want to get involved in a constitutional argument, we simply draw the committee's attention again to the Ontario Trucking Association brief which has a legal opinion clearly stating that such a clause would be constitutional and that the opinion of the Attorney General (Mr. Scott) is flawed. Again, I point to the Canadians-first policy that has recently been espoused by the Premier (Mr. Peterson). No matter which way you cut it, to us the minister's stand on reciprocity contradicts the Premier's policy.

The minister has indicated that if he were to allow for the denial of licences, even where it is shown that the granting of the licence would be significantly detrimental to the public interest, we would simply lose our transition period, allowing for the existing market to adjust. We simply cannot understand this logic. It appears to us that the minister is suggesting that instead of denying a licence to someone who will have a significantly detrimental impact on the public interest, all existing carriers in the market should adjust. Does he mean we should all adjust so that we all impose significant detriment on the public interest? Does it not make sense not to have someone on Ontario's roads and highways who has been shown could impose significant harm on Ontarians?

In his submission, the minister has implied, at least to us, that the OTA has not been bargaining in good faith. He supports this by drawing on a quote from the executive vice-president of the Canadian Trucking Association, Ken Maclaren. First, it is likely that Mr. Maclaren's quote was taken out of context. Second, it deals with federal deregulation and not with Bill 88. Third, Mr. Maclaren does not speak for the OTA with respect to Bill 88.

It is our feeling that if the minister implemented some of the amendments to Bill 88 which the OTA is calling for, then the bill could have passed long ago and the committee would not have had to sit through three weeks of hearings. Furthermore, we wish to stress that it is not only the OTA which wanted to see Bill 88 amended; so have a significant number of small Ontario communities, including the county of Brant, which is attached in appendix B.

The minister stated he did not think it appropriate or suitable to require applicants for trucking licences to be tested for their financial or business capabilities through the Truck Transportation Act, and although the

fitness test is still thorough, the requirement for a review of business plans has been eliminated. Again, we have a hard time understanding the thinking behind this. If applicants are not to be tested for their business capabilities, how can we possibly be assured that the service diversification which the minister hopes for will transpire?

In addition, if there is no assessment of the applicant's financial capability, how do we know that they will be able to survive in the price competition the minister forecasts? More important, how can we be assured that carriers under financial duress will not skimp on maintenance and safety requirements? We would have preferred to have seen a business plan included in the fitness test.

The minister also stated that changes to the extraprovincial legislation were implemented on January 1, thereby creating a situation where Ontario currently must administer two different systems. Currently, this is so, but as I believe the transportation lawyers have told this committee, even after Bill 88 is passed, Ontario will still be administering two different systems.

As the lawyers have indicated, the Motor Vehicle Transport Act and the Truck Transportation Act are different in several respects. The major difference in our minds is that under the Motor Vehicle Transport Act a licence will be denied where it is shown that granting of the licence would be detrimental to the public interest. Again, the Truck Transportation Act provides no power for denying a licence even where it is shown that the granting of that licence would be significantly detrimental to the public interest. We expect the difference between something being detrimental to the public interest and something being significantly detrimental to the public interest will be substantial.

In conclusion—and thank you for your understanding—we would like to make a couple of final comments. It has been said that such a reciprocity provision could be discriminatory. I guess if you want to look at it that way, it is discriminatory, but discrimination has been and continues to be an important public policy tool where it is in the public interest. We believe that a reciprocity provision is in the public interest of our communities and the communities of Ontario as a whole. All we are asking for is fairness.

We would like to thank the committee for hearing our brief today and we would be pleased to try to answer any questions the committee might have.

Mr. Chairman: Thank you. I just have one brief question, and other members do too. On page 4 of your brief, point 8, you say, "The minister has indicated that the government of Ontario might provide incentives to US carriers to set up business in Ontario." I missed that somewhere, because I do not remember him saying that.

Mr. Baird: What I would suggest to you is that in the brief that the minister submitted, on page 14, the question was asked: "If it were in the power of the government of Ontario would it allow an American steel company to establish a plant in Ontario creating Ontario jobs? The answer to this one is obviously different—we might even give them incentives to do this—and this example is completely analogous to a US trucking company setting up business in Ontario."

We either understood correctly or misunderstood that in this particular case it was analogous to the question on American steel and a company that may want to locate in our province, and we see this, that there are incentives

taxwise and grants being given to industries to locate in our province. We read that to believe that perhaps this government may be prepared to give some non-Ontario, non-Canadian incentives to set up shop here.

Mr. Pouliot: Mr. Baird, I welcome you and your distinguished colleagues with your presentation. Mr. Chairman, I know you are not suggesting this in the least but I, for one, do not believe that the minister would systematically or deliberately mislead the committee. But I certainly believe that perhaps he could have been ill advised because what we see is rebuttal with substance after rebuttal to what the ministry has quite candidly chosen to put forward.

I will be supporting your position where it counts, which is in the Legislative Assembly. I know that I will not be alone at my post when I do that. There will be people from your riding, people like Gordon Miller and the Treasurer. Surely those people would not wish to see the demise of—they have noticed what happened to Maislin Transport. They will also notice what happened to Transport Route Canada. Surely they are upright citizens and they would not harm the good functioning of the trucking industry.

I was pleased to see the 1986 survey by Mr. Baird where all indications point out that people are generally satisfied with the state of trucking in Ontario.

Mr. Baird: There seems to be a tremendous misnomer out there outside of the trucking industry that the carriers who have licences are automatically granted a printing press to make money. There is an obligation and has been for some time to file rates in Ontario. But the carriers are free to file the rates that they believe will return the proper amount on their investment and will still allow them to be competitive in the marketplace.

That is what we could not understand time and time again in the minister's statement, which led us to believe in reading it that the trucking industry was certainly ripping off the consumer in Ontario. Indeed, that is not the case from my knowledge of the industry and the carriers represented here.

Mr. Pouliot: Time and time again some of the members of this committee have had the opportunity to review and to digest and assimilate some financial sheet. In fact, in terms of return on investment, from trip to trip or from hand to mouth you are indeed, in my opinion, highly competitive. When we compare your financial position to the financial position of the manufacturing sector, you lag far behind. It brings one to wonder where, if it does exist, the monopoly is and where the cartel is with the mergers and the takeovers.

I try to keep abreast of that because my friend Charles Beer is telling me that I should pursue my economic savvy. I read a lot and I see mergers, takeovers and price-earning ratios. I am getting to be pretty good at it, Charles. I really agree with your position and I find it very difficult to believe—you know the old saying, "If it ain't broke, don't fix it." Is that the way you say it in English, Mr. Chairman?

Mr. Chairman: Yes. I think that is right, as if you did not know.

Mr. Pouliot: I do not hear any outcry saying that the trucking industry needs to be revamped. We have not yet been satisfied by any answers from the ministry or the minister, telling us that this is the right way of

doing business. The factors are not equal. You do not have a chance. You do not have reciprocity in this affair. I would like to suggest that we all individually—not with the people's money, because we are very good at that—we have all kinds of latitude, and if we conducted our affairs the way the government suggests you should conduct yours, we would be joining the bread line within two weeks.

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This is Mike Tyson at his best here, and I have as much clout as Mickey Mouse. We have searched long and hard. We went back to 1980, document after document, to establish reciprocity, and our conclusion is that it is one-way free trade. You are giving the right to others to operate, yet 43 out of the 50 states are regulated to some degree. The costs, the business climate—my question is coming, sir—do not give you a chance.

Maybe you can help me with this. You employ collectively some 1,100 workers, people with family, taxpayers, Ontarians. I would suspect that the majority voted for the government in power. They have 94 seats. With the passing of Bill 88, do you foresee some of your colleagues being squeezed, perhaps going out of business, joining Maislin and Transport Route Canada? Am I going too far? Am I catastrophizing or is that a possibility?

Mr. Baird: Let me address your comment. The thing you have to remember is that Bill 88, in and of itself, is a tough piece of legislation; but to have Bill 88 come in at the same time you have just got the Motor Vehicle Transport Act, which is deregulating federal trucking, to have it come in at the same time that our newspapers are full of free trade—I guess your guard at the wall is as good as any one of our guards at the wall, but I am sure some of the members here, John and Keith, may have a comment on what their day-to-day experience is coming from in dealing in this truckload environment. They are having to compete on an international basis with the international carrier, and if what they see on that international business is any basis for what will happen if those same operations then come into Ontario, I think perhaps the record can speak for itself.

Keith, do you have a comment, or who would like to address the rate situation and your competitive deal?

Mr. McBurney: What we are finding is that for the American carriers, for instance, a tractor is about \$20,000 less in the United States than it is in Ontario; trailers are cheaper. Their drivers are not as highly paid and they can haul freight more cheaply over here. They do not pay taxes here that I know of. We really feel that we lose 25 per cent of our business anyway.

Mr. Baird: John, do you have anything you want to say?

Mr. Smith: Basically, a lot of the US carriers coming up are going to our major customers and indicating rates at which they are willing to do it. A major customer puts the US carrier in for a little while, starts to starve us out and tries to make us reduce our rates to match those of the US carrier. The rate levels are so far under costs at which we have been doing business that we walk away. We have walked away from many accounts in the last three months, and this US carrier coming thousands of miles and needing something to get back to that northern border state will do it for next to nothing, just to get there to find another load to get back that extra 1,000 miles back to his home base. It is happening on an ongoing basis steadily.

Mr. Beer: Can I just ask a supplementary for a minute, Mr. Chairman? What you are describing there, can they do that now? I wanted to be clear from the presentation. When US truckers come into Ontario, I think you know that in getting back to the closest border point they can do what was called incidental cartage or something. But does that happen right now apart from Bill 88, or is that something that became allowable under the federal deregulation?

Mr. Smith: Basically, that came under the federal, but I am trying to make an example of what can happen. For example, if a US carrier comes into Toronto and has to get back to Detroit but there are a number of loads to go to Windsor, what is the difference? He will go down there for next to nothing, just skip across the bridge and pick up our load to go to our home base. That is where it is going to happen: Our point-to-point deliveries in Ontario are going to be affected.

Mr. Beer: They can simply underprice you. For them it is gravy.

Mr. Smith: That is right. It is just to get there.

Mr. Baird: To be clear, Mr. Beer, to do that they have to have the extraprovincial authority; then, of course, under ITA they will apply for the intra-Ontario authority. They will be able to do that in concert with one another.

Just visualize for a moment a map of Ontario and the 48 states. You take a Canadian carrier, one of these carriers, getting a load of freight out of one of the shippers in the province, going to Dallas, Texas. For them to find a load in Dallas to come back to one of their points in Ontario is a lot more difficult than a US carrier who would come up here from the United States to Toronto and look for a Toronto load going anywhere in those 48 states. Just the ebb and flow of commerce and the freight availability, together with the geography of the two countries, clearly puts the advantage with the truckload carrier operating from the US, given all those other factors, as well.

Mr. Pouliot: I am simply shocked. Maybe I missed the handle on this, but up north we are satisfied with trucking. We have seen one more time what has happened with deregulation, of the airline industry, where we were guaranteed that service would improve and that the price structure would be more competitive. The very opposite happened: we have fewer routes, fewer airlines and less service at a more expensive price. I am not talking about yesteryear. We can all relate to the recent legislation. I am talking about yesterday.

Mr. McLean: Did you see the reply to the letter Brant County sent to the minister supporting your position? What was the reply from the minister to that letter?

Mr. Baird: I do not have a copy of that in my file. This was provided to us by the Ontario Trucking Association. I have a representative here, if I might just take a moment.

Mr. McLean: It would be interesting to know what the comment from the minister was.

Mr. Baird: (inaudible) we did not see a reply to the letter.

Mr. McLean: Would you elaborate a little on the constitutional argument the minister had indicated; that the clause would be unconstitutional?

Mr. Baird: I do not know that any of us is able to really argue that position. All I can tell you is that as a member of the Ontario Trucking Association, we became aware of a legal opinion which was obtained by the association on whether a reciprocal clause in this bill would be constitutional. I understand it was researched and language was provided in the brief by the Ontario Trucking Association, and the view of the trucking association and its membership is that it could be implemented and it is constitutional. The understanding I have, as recently as lunchtime, is that the Attorney General's office does not see it that way. This is a legal matter that someone a lot smarter than myself will resolve.

Mr. McLean: I thought Bill 88 was going to streamline the situation, but I understand from your brief that you are still saying the province is going to be administering two different systems.

Mr. Baird: That is our understanding as outlined in the brief; the federal system and a provincial system.

Mr. McLean: Is that the position of the ministry? Who is here speaking on behalf of the ministry? Is that their position, that there will be two different systems?

Mr. Pouliot: They worship the legal ground the Attorney General walks on, but it would be nice to have a second opinion, or a first opinion in this instance.

Mr. McCombe: The federal act and the provincial act are not carbon copies of each other, but the concepts of fitness and detriment to the public interest were originated in the consensus approach of Ontario seven years ago, copied by the federal government and in the memorandum of understanding entered into by the 13 jurisdictions a couple of years ago, they are extremely similar. They are not word for word identical. The only example which I believe was given of a difference was the effect of the board's decision in the public-interest test as to whether it could issue a licence for only one vehicle or no vehicles. I would suggest that is not a major distinction in the process of licensing.

Mr. Baird: Mr. McLean, please understand that we are not legal people, but in my reading of the brief that was presented to this committee by the Canadian Transport Lawyers' Association I am led to believe that there are more than just cosmetic differences between the two acts. I certainly stand to be corrected on that, but that is my interpretation of what the lawyers have said. They make their living at dealing with these laws.

Mr. McLean: I have one further question. The minister indicated that the service people in Ontario have been paying an inflated price. To what degree would that be inflated, in your opinion, or is it not inflated? The minister has indicated that in his brief, according to yours.

Mr. Baird: The way the minister has said it, I have difficulty in understanding what he is basing it on. If it is from the viewpoint of what the carriers are receiving in compensation for hauling the goods, then I do not believe he is correct at all. If he is talking about the cost of transportation as it relates to the price of the goods, then he might have some validity there.

But I think we have to realize that Ontario is a pretty diverse province and there are a lot of miles between Toronto and Kapuskasing or Thunder Bay,

so in a longer length of haul you are going to have a greater content of transportation in the price of the goods. Perhaps I could ask the carriers here who might be prepared to talk about when they had a rate increase the last time. Mr. Slack?

Mr. Slack: For our major shipper, it has been over two years since we have had an increase on the Ontario market. Our shipper ships to the US, but it has been over two years now, close to two and half. Since then we have had sales tax added on in Ontario, costing us approximately \$175,000 each year. In that time, we have had a total wage increase of 10 per cent, five per cent last year and five per cent again this year. Our shippers are wanting to ship heavier loads all the time, so it has been slowly, every year, obsoleting three-axle equipment that we have had. For example, we have been having to buy four- and five-axle equipment to handle basically the same number of loads. We cannot stand to get any more competitive than we are. If the minister knows how we can operate any more efficiently than we are, we need his help.

Mr. McLean: What has been your insurance increase? Have you set an increase? It was supposed to be frozen. I do not know whether it is.

Mr. Baird: Two and half years ago—it will be three years at the end of this year, I guess—our insurance company, the one we were with anyway, went broke. Our insurance more than doubled at that time. The only way we have been able to control our insurance costs since then is by hiring extra people in the safety end of it and by raising our deductibles. Now we are up to the \$25,000 deductible and over that we still handle a portion of it ourselves, just trying to control our insurance costs.

Mr. McLean: So they have doubled in three years, you say?

Mr. Baird: As soon as that insurance company went broke. We have had a small increase. We had an increase more than twice the first year's. What had happened was it got narrowed down to where it was almost a monopoly; we had two insurance companies willing to look at us. We went with the cheaper one. Our coverage went from \$10 million liability down to \$2 million. We lived with that until this past year, when we finally got up to where we get \$5 million again. The second year our insurance went up again. The third year we had to switch companies to get a decrease and also had to go to \$25,000 deductible. That is a heavy load.

Mr. Miller: I am pleased with the presentation that has been made today. Giving all concern to my colleagues across the table, I think it the way the democratic system works. We do not bring a bill out and chuck it to you; we bring a bill out and then have input. I think that is democratic and the way it should be. I am the first one who certainly would not want to see our local firms or anyone go out of business if it is possible to avoid it. I do not believe this bill is going to promote that.

I think what is really happening is that it is falling in line with the federal legislation, which has brought about deregulation. We had Quebec make a presentation to us yesterday. They have their bill adjusted and in place and it seems to be working well. I think they have a hearing committee established. They have had only three come before it.

On the comments you made in regard to incentives to locate in Ontario, I think that is happening in many areas, such as the car industry and a lot of industries. I believe some of you are planning to or have looked into establishing offices in the United States, so you have a leg up in that part

of the industry. I believe they probably offer some incentives to locate there too, because I know they are looking for business exactly the same as Ontario.

How much business does the group do with our friends to the south, what percentage of the business?

Mr. Baird: It would be just simply a guess at this point, but I would suggest, looking around the table, maybe 40 per cent or 50 per cent collectively. Am I wrong in that? Is that about a fair statement of business internationally versus business within Canada?

Interjection: About 50 per cent, yes.

Mr. Miller: What would you say, Mr. McBurney?

Mr. McBurney: I would think about 30 per cent or 35 per cent.

Mr. Cronkwright: Our volume of business is not that great. I have a great deal of concern here as to how the relaxing of the laws here in Ontario will allow American companies to come north here and set up. They could administer all this from various locations in the United States. Central Transport does it quite effectively out of Sterling Heights, Michigan, the old McKinlay operation that used to go up and down our highways in Ontario. CT is hauling a lot of freight, automotive as well as general freight.

With the new, relaxed rules in Bill 88, what we are going to see is increased competition. There is no new freight. We are not adding increased freight. We are just adding increased competition. The health of the industry is important because it reflects on safety. It really does. You can only maintain your fleet with so many dollars. When the dollars run out, where do you go from there?

I saw it in the dump truck industry. The dump truck industry was deregulated and after two years, or a period of time, regulation was brought back in, in order to have some sensibility in that segment of the marketplace. We are heading into the same avenue with Bill 88, the relaxed licensing.

Mr. Baird: I think it is important, as well, that while we have talked about the US here, we do have this federal bill. It seems to me, from what I can read, that every province is putting its own interpretation on how it is going to regulate extraprovincial trucking. If you talk to the chairman of the Manitoba Highway Traffic Board, it is going to be significantly detrimental to anybody getting a licence in Manitoba. I do know of a member of our constituency who applied for permits to haul four loads from Thunder Bay to Winnipeg and got a letter back, with five letters attached, from Manitoba-based carriers that said, "We can do the business." So unless something happens, nobody is going to get in to do business within Manitoba. That door is going to be barred.

I can understand the Quebec situation, but I would respectfully say to you that the Quebec freight pie is a totally different situation from the Ontario freight pie. I think we are all aware of statistical data that talk about how much freight and tonnage is available in each province in Canada. I am not sure of the rate at a given time, but Ontario far outweighs most of the other provinces and may even match all the other provinces collectively.

Some of those provinces that do not have a lot of risk could very easily say, "Hey, it's okay by us. We will do it," because maybe the numbers of

people wanting to get into that market are not going to be as great. When we talk about Quebec and trucking, one of the things that comes to mind is paper, one of the major things coming out of Quebec. There are some consumer goods going in, yes, but it certainly does not have the consumption that Ontario does.

I think I can speak for all of us. We are darn proud to be Ontarians. It is very diversified. The economic situation here has been pretty high, and we are talking about a whole different ball game here with Ontario than we might be for Saskatchewan. I mean, what is moving out of Saskatchewan? Potash and some consumer goods. What comes out of Alberta compared to Ontario?

1500

I guess what I am saying to you is that from our viewpoint there is a lot more at risk here in Ontario based on what is available to be moved. Do we simply say to all these people—not me, because I am not one of them—who have been through one, two and three generations: "Fellas, thanks very much for the help, but if Johnny comes along tomorrow and has a new idea, if he's price and service competitive, we'll see ya. We'll give it all to Johnnie." What do these people get as a reward for everything they have done in all of the years?

I do not see operating authorities as being any different than dairy marketing board quotas. I am told of places in our community and other communities where the dairy quota is now worth as much as the herd. I see in the paper where the wine industry has a problem and somebody gives it some money. God, I do not know. What is wrong with us?

Mr. Wiseman: Did you ever ask the Treasurer that?

Mr. Baird: Yes.

Mr. Morin-Strom: Thank you, gentlemen, for your presentation today. I particularly appreciated the detail you went into on each of your firms and the contributions you have been making to your community as well as to the province as a whole in terms of the investment you have made in the province, the number of jobs you are providing here in the province and the revenues to the governments which are being provided through your operations, through provincial fuel taxes, federal tax remittances, provincial sales taxes and then, of course, income taxes on behalf of employees.

I think most of these individual presentations mentioned that, even recognizing that the trucking industry generally has not had the kinds of returns as many other industries have, it has reinvested them back into the industry. Much of it has gone into the purchase of the operating authorities.

I would like to know a little more about what that really means, what type of investment is required which firms such as yours may have actually tied up in those operating authorities and the kind of loss you are looking at here with, as I understand it, an operating authority that will have no value at all. Is my understanding correct? What really is being put at risk in terms of investments you have made to build your firms?

Mr. Cronkwright: I would like to speak to that, if I could. Our operating authorities currently sit on our books at \$323,000. We have written off \$104,000 at the five per cent rule which is allowed currently. Effectively, the banks lend money based on how secure the loan is going to be. In the past, they have looked at that asset and said, "Look, that's solid,"

but based on the changes that are contemplated, they are saying, "Look, there isn't any value there."

To our company, Cronkwright Transport, it is \$323,000 at the end of 1987. That is just to our firm. It will vary from firm to firm as to what the experience has been in terms of acquisition in terms of applications. That is significant to us.

Mr. Baird: One of the things we did notice when the United States went through the deregulatory process is that there was a system by which carriers got a form of credit. I am not totally knowledgeable about what all of the inner workings of that were, but it was recognized by the government of the day there that these things had a significant value and it did address that and deal with the carriers.

Mr. Cronkwright: That was in June 1980, when the deregulation bill went through there. They were allowed to write off all their operating—

Mr. Morin-Strom: But you will not get any tax write-off, no recognition by the government that there ever was an asset there of any value which you have lost?

Mr. Pouliot: Your goodwill value will just vanish?

Mr. Baird: It just disappears, and the banker calls and says, "Come on in because I want to find out now what the asset is going to be to replace it."

Mr. Pouliot: And your ability to borrow will be affected.

Mr. Morin-Strom: One of the perceptions here that has been brought forward by the government members and certainly by the ministry and some of the consumers of trucking services is that you are operating in a monopoly-type environment. We have the statement you have talked about from the minister that if you were in a competitive environment, the consumers of this province would have lower prices.

If in fact you are out there with the opportunity to buy these operating authorities, I wonder if you could give us some information about what is the possibility under the current act, not the proposed one, of entering the market by purchasing operating authorities. That seems to imply to me that somebody who wants to get into business has a way of doing so.

Are we looking at situations where, for any particular route or product there is in fact a monopoly, where only one person is allowed to operate that route and if you do not go by his authority, you cannot operate it? I wonder if you could just give me a little background on these operating authorities and how many there typically are on a route and how it is you go about purchasing—or did in the past, at least—getting the rights to be able to provide the service.

Mr. Baird: Let me suggest to you, first of all, that as we said at the outset of our brief, we are talking about a couple of different market segments. One is a truckload market. There is one shipper, one consignee and one load of freight.

There have been many options over the years available to people to move that freight whether they held a licence or they did not hold a licence. There

were leasing arrangements—just somebody who says, "I'm going to do it until somebody catches me." Perhaps the lack of enforcement has allowed people to carry on business that way.

Certainly in the last number of years, we have not seen any situation where the Ontario Highway Transport Board has been flagrantly turning down application after application. We see more being granted, granted, granted, all along, upon application.

I think if there has been a perception that it was difficult to get into the marketplace, it was on a less-than-truckload environment in which you might have had a carrier, as an example, serving from Toronto through to Windsor in the southwestern Ontario region. He wanted to serve from Toronto to Ottawa and Montreal in the eastern region in one fell swoop. .

In that particular case, rather than going through the whole licence hearing process of witnesses and everything else, maybe he talked to a carrier that was for sale. He would purchase that carrier, and as a result of purchasing that carrier, there were value of operating authorities that were attributed and rolled over into the new company on that basis.

I have been around this industry for probably 29 years. In the truckload environment, people who want to get main-shipper authority and point-to-point authority, have been able to get that reasonably easily in the last period of time.

I do not know of any place—you say competition on a route. In the environment these people are dealing with, the competition on the route is, first of all, the shipper; he puts his own truck on. There is another company that comes along and asks for authority on that basis. Somebody comes along and offers a lease deal. Somebody offers a lease plus a driver service. The competition is endless out there.

In some routes—we talked to our people from the north—I am aware of the fact that on less-than-truckload traffic perhaps going from Toronto to North Bay, Timmins and Sudbury there may be three or four carriers on that route. But what do you call competition? To me, competition is when you have more than one. I do not know of any route in Ontario that has not got at least four or five or six or seven ways of doing the business for the people in that community.

Mr. Morin-Strom: And someone who wants to enter feels there is a niche there where he thinks he can do better than the others and has a number of means, you are saying, to do so, either by trying to buy an operating authority, buying up one of the firms that is already operating it or applying to the Ontario Highway Transport Board?

Mr. Baird: Yes.

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Mr. Cronkwright: Really, the success rate of applicants before the Ontario Highway Transport Board in the last five years, and of course it has been going up in terms of granting the authorities, is somewhere up around 98 per cent of all applicants who come before the board; their licences are granted. It really is not a practice today to buy operating authorities, as such, because of the administrative ease that has come from the Ministry of Transportation.

I do not know whether they are instructing the highway transport board to be more liberal with the granting; it certainly has seemed that way. There have been a lot more people getting into the trucking business currently in Ontario, and this is opening it up to Americans who want to establish in Ontario as well. We feel that there are some rules that are just not fair on this whole arrangement here. We have seen the number of entrants increase.

Mr. Morin-Strom: Thank you very much. We know there are 800 members of the Ontario Trucking Association, and I suppose that is a sign there is some kind of competition out there currently today.

Mr. Beer: I also thank you, Mr. Baird, and your colleagues, for a very interesting and thorough brief which certainly raises a lot of questions, questions which I think clearly the government must respond to in proceeding with the bill.

I would like to get a better sense of the impact of the federal legislation and then the kind of add-on that would come if Bill 88 went ahead, as it is now proposed, in terms of some of the problems that you see. To confess a background of some ignorance, I am by no means a specialist in this area. I have not been in the trucking business, so some of my questions might seem quite simple.

Under the federal deregulation, the situation right now with that in terms of American trucking firms coming into Ontario, how did the federal legislation change the extraprovincial, international side in terms of the competition that you face with American trucking firms—not on the intra but on the extra, I guess, which seems to be the jargon? What happened there? What has that done to your firms?

Mr. Baird: Well, the federal scene has basically opened up the international market, much as the 1988 deregulatory bill did in the United States, so that with the reverse onus and everything else, unless you can prove detrimental interest, somebody comes in as long as he is fit, etc. A number of these things are still being sorted out.

A week does not go by when I do not get a letter that thick from a lawyer, indicating this is what each province is doing, and it is very concerning because each province is doing something different from the other provinces. I will tell you something, what we see if Ontario says: "Hey, our province is open. Provided you are fit, willing and able, come on in and do the business." There are a lot of people—I am told there are 1,500 applications or more; I do not know what the current number is—non-Ontario carriers who want to get into this province to do business on an international and an extraprovincial undertaking.

Mr. Beer: In terms of the international business, that would mean they had a contract to take something from Chatham to Toledo or whatever. Under the federal deregulation, the experience or the expectation right now is that, if nothing else, it is going to add a lot more competition in terms of Americans who are going to come up. You are saying that if this bill goes into place, not only are you going to have that, but a number of companies are then either going to try to set up shop in Ontario or, as Mr. Cronkright was mentioning, are going to be able to do it from their base in the United States and would enter into direct competition with you on intraprovincial trucking of goods?

Mr. Baird: It is a lose-lose situation for the Ontario carrier. First of all, if we talk about the federal deregulation, that has opened the door for extraprovincial—US to Ontario, any other part of Canada to Ontario. We then open up the door, under the Truck Transportation Act, to do business within Ontario. We then have a government that thinks free trade is great, and everything that I could read about free trade says more north-south.

In my view, if there is more north-south, you know where it is going to originate from. Contrary to what some people think, I think more of it is going to originate from the United States coming into Canada. Those people who are positioned in the US to haul that freight from the US into Canada and are looking for return loads to get back home to get more freight to haul into Canada are going to have a distinct advantage, when you look at depreciation, fuel tax, cost of equipment and everything else.

There is the combination of the two things: the ease of entry to get into Ontario, first, and, second, the ease to be able to do business within the province. We read articles all the time now. We are in the truckload business. Some of these fellows have cellular phones, facsimile machines and the office is the cab of the truck. All they do is dial in to somebody in Dallas, maybe Calgary, Alberta or Hartland, New Brunswick. I do not know.

Mr. Beer: Would it be fair to say that even if there were some way to build in reciprocity, whether into the bill through regulation or some other means, it would be your argument that the Ontario truckers are still at a disadvantage because of some of these other things that you have mentioned, in terms of the tax system, depreciation and so on?

Mr. Baird: Everything that we have done, and being a member of the Ontario Trucking Association, everything I have seen coming as a result of investigations from the OTA, indicates that we do not have a level playing field. We do not want an advantage. Just let us compete. We think that we can compete. We are as smart as the next guy. But we cannot compete if somebody has a cost differential and a geographic advantage. That is all we are saying.

If you are going to have the Truck Transportation Act and we are going to have the Motor Vehicle Transport Act, then for heaven's sake, for the people who have been around providing jobs for all these years, look at that compensation for the loss of value of the operating authorities. Let's look at putting us on an equal footing with the other jurisdictions that we have to compete with.

If you have an Alberta carrier, a British Columbia carrier or a US carrier that wants to come in here, unless the thought process behind this government and the federal government is that you want it all run from other than this country, we do not understand why consideration cannot be given to those things.

We do not think we are being unreasonable. Look at what these five companies are doing in those small communities. This fellow here is from Walsh, Ontario. Do you know what it is? It is four corners in the road, with a lot of Bruce R. Smith trucks around it. That is a lot of money going back into that local community. Given what is going on in tobacco country these days, I do not think they want to lose any of that. That is where Walsh is located. Just give us a fair deal.

Mr. Slack: What we have seen are the US carriers—again, anybody can get an authority now and pretty well come into Ontario, going into the US.

What that has done to our rate book, really, you might as well throw out the door.

Most of the shippers, if they shipping in the US, they are also shipping in Ontario. So a lot of us are working for companies that are shipping in both directions. They are using the American carriers. There are some large successful companies out there that are running dirt cheap. They are based out of the south. They have got drivers who are working for probably two thirds of the wages that our drivers are working for. They are on the road. They live in the truck and they run from point to point.

As Peter pointed out earlier, they do not care where they go because they can go back to anywhere in the US. Our area is Ontario that we are coming back into. It is not that big an area. Most of your movements are between the Niagara Peninsula and Toronto and back into the US.

What we are finding is that if our rate, say, on a long-distance load is C\$2.20 a mile into the US, they are coming in and they are quoting C\$1.30 or US\$1.00 a mile or whatever to get back to whatever point they want to go to. It is not that they can always provide the equipment that we have sitting there to provide. But they are giving a guideline to the shippers.

The shippers are smart shoppers. They know how to work us. They know how to work the guy who is calling from the United States. Our shipper just says, "Do you want the load or don't you want the load?" They could force that up as a house carrier for a company providing shunt services, two-day-ahead loading and 24-hour service for them.

It is not easy for a company from the United States to come in and do that, but the threat is always there. When we get an investment tying up 150 trailers and, say, 80 tractors just for that account, just to service that US market or that Ontario market, we have a large investment that obviously has to be financed somewhere.

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They have you in a spot when they say, "Look, do you want to do it for the same rate again this year?" or "Do you want to do it for 10 per cent less this year, or do you want to give it up?" How do you give it up? Where do we go in Haldimand-Norfolk to put all that equipment to work again? The US influence has really caused us a lot of problems in our flow of business south just this year, especially in the last seven or eight months, because of all the extra carriers. You have the difference in the US dollar too, which has affected these companies as to where they want to sell their product.

We are afraid, if you get that American carrier in and doing a bit of the work to the United States, the first thing you know it will open up here. That guy turns around and he has a Canadian fleet available as well. He just keeps picking away at you, and pretty soon you do not have anything left. That is a problem for us.

Mr. Beer: Thank you very much.

Mr. Chairman: I think we had better move on now. We have two other presentations this afternoon.

Mr. Wiseman: Can I ask a quick question? I am not on the list there.

Mr. Beer: I understand Mr. Pouliot was so exercised at the beginning it has knocked our time frame all off.

Mr. Chairman: I do understand that.

Mr. Wiseman: I was pleased with your presentation. I was interested in what Mr. Slack said about no increase for two and a half years. You never mentioned your backhauls. Some of the shippers were saying, and I think in the minister's statement when he started the proceedings here he said that if we got the backhauls, then we could turn that saving around to the consumers.

We heard a fellow from Belleville the other day who said if he had more than 10 per cent coming back empty, he was in trouble. He tried to work on 90 per cent backfill. Just to the five of you there, is your backfill in the range of the fellow from Belleville? What percentage of the time do you come back empty?

Mr. Baird: Does anybody want to offer any comments? I will tell you a general statement: If you are not getting very much going out on the front-haul, every empty mile coming back is going to cost you 85 cents to \$1. You cannot afford to run too many empty miles or you will be in big trouble. I think that is what he is addressing, his empty-mile percentage.

Mr. Wiseman: Have you ever figured out your percentage of backhauls? I guess in certain commodities, like we heard about this morning, where you have tanks that have acid or something in them, you cannot put anything else in them coming back. But where you have commodities that you could mix and match different products—

Mr. Baird: Let me ask the question: Do any of you have over 10 per cent empty miles, or do you have a criteria?

Mr. Cronkwright: I would just like to comment. The bulk of our business, 95 per cent, is done within Ontario and is relatively short haul. A carrier of our nature will have a higher percentage of empty miles than a longer-haul carrier. It is just the nature of the beast.

I mean, how much freight moves from Brantford to Simcoe? There is not that much, so you have that empty lane. Even though you might have a head-haul load from Simcoe to Toronto and a load from Toronto to Brantford, there is no way that you can fill that Brantford-to-Simcoe lane; whereas if you are on a long-haul move into Chicago, you had better not be coming home empty or you will be out of business. You will not stand many empty miles on long-haul traffic.

Mr. Wiseman: I just want to clarify in my mind, if, like Mr. Slack, the rest of you have not raised your rates to many of your major shippers for two and a half years, I think you said, or close to that, and you are really doing quite well on your backhauls, there would not be a great deal of movement then, in the long run, to save the consumer some of the money that some people have an idea that they are going to save with deregulation of the industry.

Mr. Slack: We are relying on our backhaul to make up for what we are not getting on our front haul. For ourselves, working for Domtar is our major account. We are their house carrier to the Ontario market. It is set up as a front haul. Wherever we go from there, we have to try to find that other load for us to move while we are out there, and then bring the truck back again. We

are relying on those other loads and we cannot afford to lose them to anybody else and we cannot pass any more savings along to Domtar, but we have to maintain whatever else is out there in the Toronto area or wherever it may be for us to try to make a living.

Mr. Wiseman: Just a quick little one. There was one yesterday that was brought to our attention. It was the first, and that was for interim licences that maybe you put in a price, you got the business, but you did not have a licence to go there with your present holdings, but you put it in, hoped that the board would approve of that. We heard something about 19 or 18 were supposed to be said no to, and that perhaps the fellow thought that they would run out at the end of this month and then you could not renew those week-by-week until such time as whoever looks after them in the ministry either approved the licence or did not approve.

Are any of you in that boat? Did I make it clear?

Mr. Baird: You are talking about temporary permits that we used to be able to get granted and then telephone—

Mr. Wiseman: It never came up until yesterday and I wondered if any of you are caught up in one of those 19 or whatever that might mean that you would have to give it up at the end of September if that is true.

Mr. Baird: We are not, no.

Mr. McBurney: Just one answer to your backhaul situation. We have one chap in our office, and all he does is look for backhauls from the US, western Canada, and Quebec. I call it very fortunate. We very seldom or never come home from western Canada empty and we do not come out of Quebec empty.

Mr. Chairman: Mr. Baird, thank you and your colleagues very much for your presentation to the committee. It was very interesting and well presented. You come from a very fine part of the province.

Mr. Baird: Thank you, Mr. Chairman, and thank you to the committee. I realize we have overstayed our time, but you have made us feel very comfortable. We were all quite nervous coming and we hope you have a little better understanding as a result of our visit.

Mr. Chairman: The next presentation is from General Cartage and Express Co. Ltd. Mr. Ross Moore, the president, is here. Mr. Moore, sit down and make yourself comfortable. Welcome to the committee.

GENERAL CARTAGE AND EXPRESS CO. LTD.

Mr. Moore: As you can see, I am not going to take very much of your time. I do not have a great deal to say.

Mr. Chairman: It is not the witnesses who take a lot of the time, Mr. Moore.

Mr. Moore: I just want to point out my concerns. General Cartage and Express Co. has been in operation since 1949. On June 1, 1954, I purchased a one-truck business. The company was incorporated in 1966. At the present time we operate 25 tractors, 44 trucks and 60 trailers.

In 1987 sales were \$5 million and 55 cents of each dollar we bill goes

to an employee. We employ 65 people full time and some part-time help. Our service area at the present time is basically 75 miles from Toronto city hall. We provide same-day service to Metro Toronto and Mississauga. All other areas have next day service. At this time we have no interest in servicing the states that border Ontario, but should our borders be opened up to the American trucking firms, we feel the Ontario government should ensure that we have the same right of access to the bordering American states.

That is my presentation.

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Mr. Chairman: Thank you, Mr. Moore. It is one of the few presentations in which the presenter indicates that their ox is not being gored. You just have a general interest for the well-being of the other people in the industry. Somebody had a question. Mr. Pouliot.

Mr. Pouliot: I welcome the rare opportunity to be able to ask a question. Mr. Moore, straight to the point, like your presentation, do you feel that from what you know of Bill 87 and Bill 88 if they become law it will have a negative impact on your business?

Mr. Moore: It certainly is not going to help in any way. We have lots of competition in Ontario now. If the borders are open to the American truckers it has to bring in more.

Mr. Pouliot: It is ironic, well it is beginning to resemble a flood now. We have had people like yourself, very few people I would assume, know trucking better than you do, know better what is out there, since you are doing the job. It is not the members of this committee or our friends from the government who can tell you how to run your business. You are the one taking the risk. You are the one who started with one truck, built it to a medium-sized operation of 25 trucks through hard work, through your competitive spirit, your willingness to go ahead. I am pleased that you do so in Ontario.

Your last paragraph, all you are asking here is to make sure that we legislators give you a fair break.

Mr. Moore: Give us the same chances. That is right, a fair break.

Mr. Pouliot: I, for one, am not satisfied that we are getting a fair break. I think people like you are being sold out and presenter after presenter has made that point very clear. We have been at this for a number of years now. I remember in 1985. It did not pass then because it is a numbers game. It was not part of the accord. It was not on the agenda. Let us face it, you had a minority, so along with our new-found friends, with the opposition, we presented so many amendments, for fair play. But the government of the day thought that it was a deterrent to their bill, so they waited. And, now they are coming back with this. In my opinion and I really sympathize with you, there is no reason in the world and I am a free enterpriser at heart. Really I am. Do not listen to these people.

Mr. Moore, I have a question for you. I would not wish to be a trucker for anything in the world, because I know, and trust me, I have no vested interest in this, but this thing is flawed. You do not have an equal playing field. The rules are one-sided. You pay more corporate taxes. You pay more for your insurance. You pay more for your gasoline. You pay more for your labour.

You pay more for your equipment. You do not have the possibility to write off your goodwill, your licence. You can no longer use that goodwill value as collateral. Your borrowing ability is being restricted.

Mr. Moore: That is the truth.

Mr. McLean: Majority government.

Mr. Pouliot: Do you feel threatened at the present time? How many employees do you have?

Mr. Moore: I have 65.

Mr. Pouliot: You have 65 employees. They are all Ontario residents?

Mr. Moore: Yes, they are. All Metro Toronto residents basically.

Mr. Pouliot: Correct me if I am wrong. People like Yellow and Roadway are getting richer. The small ones, the less fortunate, are getting poorer and those people are being squeezed.

Mr. Moore: There is lots of competition out there without adding any more.

Mr. Pouliot: Do you feel at the present time that the field of trucking is highly competitive?

Mr. Moore: Yes. It is very highly competitive and very well served.

Mr. Beer: Your point is quite clear and easy to understand. In terms of other elements of the bill and changes which are proposed, if the bill or, in some other way, your point about the same right of access was set out, do you have any other major problems with the bill per se? Do you feel that the general policy which I suppose has been followed at the federal level and by Quebec and in this bill of less regulation and so on is good and that it is just this link with the American market that is the problem?

Mr. Moore: I think if we had reciprocity we really could not complain about the bill.

Mr. Chairman: Are there any other questions for Mr. Moore? Being none, thank you very much for your presentation. It was certainly to the point.

The next presentation is from SLH Transport. That is exhibit 32, which is this one that has been distributed to members. Scott Marshall is here and Mr. Remedios. Thank you for coming and welcome to the committee.

SLH TRANSPORT

Mr. Marshall: Thank you very much. It is a pleasure to be here and have a chance to say a few words in our support for the bill being proposed. I am the general manager of SLH Transport and an officer of the company. We are a wholly owned subsidiary of Sears Canada and have over 700 employees, most of whom are in Ontario; we have about 100 in Quebec. Our principal business is to serve Sears Canada and we have been attempting to address that as well as we can, as cost-effectively as we can. One of our major challenges, as pointed out in the brief, is our empty miles.

I guess I am one of the guys who has an empty mile problem. We are estimating that we are about 23 per cent empty in terms of empty miles. We drive 35 million kilometres a year, so that is quite a substantial amount of wasted space and fuel and economy of scale for our operation. Pointing out what we see as to the history of why SLH exists, you have to go back to the early 1970s when Sears was looking at its distribution. It essentially got into its own trucking operation for two reasons: first, it felt it was not being properly serviced to meet its needs by the carrier; and, second, that the cost of the transportation was too high for it to afford. It made the decision to go into private trucking.

Interestingly enough, we talk about satisfied customers and shippers and that the industry is competitive, and in 1986 the Department of Transport said that \$8.6 billion was the amount of trucking revenue for the common carriers and \$8.2 billion was private carrier. I suggest that half of the people shipping freight are not satisfied. If they were, they would not be in trucking. That is where our dilemma is.

We would like to point out our experience in terms of easy entry into the market with our attempt to get licences for Sears Canada, because when you have an intercorporate exemption, you lose that exemption the minute you get a licence for someone else. You have to get a licence for yourselves as well as getting a licence for other people.

We made a decision in the fall of 1986 to go into the trucking business per se to take advantage of the service we could provide to people and also to maybe balance our freight a little bit and get rid of some of our empty miles.

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We gazetted our application on February 28, 1987. The application was made on February 10. Hearings took place in June and July 1987, and finally we got a decision, on December 21, 1987, for a licence. That amounted to a licence to carry Sears merchandise, which we are already doing, plus a licence to carry merchandise from Domtar in Red Rock to Toronto.

We had Domtar come to the hearing. They stated and proved that they were not getting adequate truck transport from the north and that they were forced to use rail to meet their needs. Carriers opposed this and they were not able to convince the board that there was not a need there. We satisfied the board in terms of being a fit and able company.

The example we are giving is that it cost us \$30,000 or \$40,000 in legal fees and took us 14 months to get a licence for freight that we will earn about \$10,000 a year on. It is about \$100,000 in revenue a year. If that is free and easy entry, I would not like to know what hard entry is.

We are simply not convinced that what is in place now, in terms of legislation and regulation, is serving the shipping public in any shape or form as efficiently as you could with freer access to the market. We are a good company, we run a safe operation, we have been deemed that by the highway transport board and we would like to get into the trucking business and attempt to fill out some of our empty miles.

It is not quite that easy. There will be some lanes of traffic which we should not be in. In our conversations with other private carriers, we see a lot of private carriers potentially getting out of the business because it will be more economical for them to ship via common carriers. If you talk

about what is going to happen in the market, I see the common carriers having a large opportunity to pick up an awful lot of freight that is moving via private carriers right now.

To conclude, we very much support this bill and we are here to say so.

Mr. Chairman: I have one question. You have 23 per cent empty backhaul. We have had people before us for the past couple of weeks who have been telling us that they have to be under 10 per cent and so forth. You somehow find it still more cost-effective, or cost-efficient at least, to do your own, even with 23 per cent empty backhaul.

Mr. Marshall: That is correct.

Mr. Chairman: That is amazing.

Mr. Marshall: We have an operating cost. I guess it has something to do with our efficiencies, the way we operate. We are getting 17 or 18 hours a day out of a tractor, which is double-shifted and sometimes triple-shifted. We look at our running costs and we know we can do it very efficiently.

Mr. McLean: Your contract with Sears, your major hauler, would be based on what percentage of nonbackhaul? When you bid on that, you would be allowing for that loss on one way.

Mr. Marshall: I am confused by your terminology, by "nonbackhaul."

Mr. McLean: Empty, 23 per cent or 30 per cent of the miles traveled empty. You would allow for that in your tender, would you not?

Mr. Marshall: We have it in there in terms of efficiencies. This would be an example of where, if we were able to get a free entry into the market, we could adjust and be more competitive, both for Sears and for other people. Domtar is an example of that.

Mr. Chairman: Was SLH Transport an existing trucking company? Did Sears buy it out or just create it?

Mr. Marshall: We created it in October 1985. We were anticipating deregulation or reregulation at that time and felt it was a matter of either becoming a trucking company, in order to sell or be more efficient by selling empty space, or getting out. That is really where a lot of the private carriers are going to be, in that dilemma.

Mr. Chairman: So before that, you hired other carriers?

Mr. Marshall: Yes.

Mr. Chairman: What does SLH stand for?

Mr. Marshall: Sears Line Haul.

Mr. Chairman: Line Haul?

Mr. Marshall: Yes, it is just a transport term.

Mr. Wiseman: Sears owns this company?

Mr. Marshall: Yes.

Mr. Wiseman: You want to enlarge it. We had heard, from some companies a week ago, that if more people got into it and it became more competitive, they would probably see themselves getting out of the trucking business and would put their money where they were more experienced in the retail end, or whatever, of the business.

Mr. Chairman: Shoes even.

Mr. Wiseman: Or shoes. I hope they do not go into shoes any more than they are.

What you are saying here today is that you probably would not. You would get even more into the hauling of freight. I just wondered about that. It must be a pretty profitable thing for the Sears shareholders if they are going to expand that beyond what it is today.

Mr. Remedios: Maybe I can answer this. Sears has a unique delivery system on the pedal run. We would run into different communities delivering at nights, making 10 different stops. Our drivers will go in, open up all our units, deliver merchandise, pick up returns and come back. Because we need a unique type of delivery, we have to at the same time help out with our empty capacity on coming back on some of the lanes.

I do not think any common carriers, although they had been tendered out a couple of times, were price competitive, nor were they 100 per cent interested in performing that kind of service.

Mr. Wiseman: You mentioned something—I know we are not dealing with the safety bill here but we have heard a lot of about safety—you mentioned some of your drivers driving double shifts, 17 and a half hours or 18 hours.

Mr. Marshall: Tractors.

Mr. Wiseman: What happens there? Do you have two drivers in every truck?

Mr. Marshall: Our operation is quite unique in terms of comparison to a normal trucking company. I can say that 98 to 99 per cent of our drivers are home every night. We do not send them long distance. We do not run sleeper cabs. What we do are switches.

For a run to Montreal, a driver will pick it up in Toronto and go to Kingston. He will switch with another driver who takes it to Montreal and he will come home. We adhere 100 per cent to the hours-of-work regulations. We do not believe that it is safe or proper to have a driver out on the road for 15, 18 or 20 hours at a time. We are very strong on that.

Mr. Wiseman: Maybe it has nothing to do with this, but is the Sears trucking firm subsidizing the trucking business by charging its customers now a dollar or two for every shipment it gets through the mail-order office? Is that going in to subsidize the trucks?

Mr. Marshall: That does not have anything to do with us.

Mr. Wiseman: It does not?

Mr. Marshall: No.

Mr. Wiseman: I just heard from a couple of people in my riding that it was the new policy, that they are charging everyone a dollar or two on every shipment. I thought perhaps you would have an advantage there that others would not.

Mr. Chairman: That is what you are talking about, is it not?

Mr. Marshall: Yes, that would be a Sears customer.

Mr. Morin-Strom: Thank you for your presentation on behalf of SLH Transport. You state that your firm, SLH Transport, is incorporated as a wholly owned subsidiary of Sears Canada Inc. Who owns Sears Canada Inc.?

Mr. Marshall: It is publicly held. Sears Roebuck has a majority ownership in Sears Canada. I am not exactly sure of the percentage but I believe it is something like 60.

Mr. Morin-Strom: They are a subsidiary although not a wholly owned subsidiary of Sears in the United States?

Mr. Marshall: Yes.

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Mr. Morin-Strom: In terms of your operation—I know from experience in the case I know of in Sault Ste. Marie—Sears, as I understand it, does not typically—and it probably reflects other stores in your operation as well, outside big cities like Toronto—carry any kind of inventory or warehousing of major items in northern Ontario or the more outlying communities. Basically you are running your store, when it comes to the inventory and your product, out of major warehouses presumably in Metropolitan Toronto.

One of the things I know you do pride yourself on is service, so when a customer orders a product, typically he can get it delivered the next day. Was that one of the imperatives in forming your own trucking firm, to be able to provide that kind of immediate delivery to fairly far-ranging communities?

Mr. Marshall: Some of the service we provide is very specialized, like the night-time deliveries. However, I would say there are many trucking companies that are well prepared to provide competitive service like we do. There are lots of people who have computerized dispatch operations like we do. The difference in our case is more response time than anything else. We will move, on a given day to Montreal, 30 loads on the highway. The next day, with less than two hours' warning, we will go to 60.

That is the challenge we work with, that we are very responsive to our customers' needs, as all trucking companies would be, but I do not think they could be that responsive. We know Sears's business; we know what they require. We know what their priorities are and we are able to work with that.

Mr. Morin-Strom: From outlet stores in other communities, are you taking the orders on a daily basis and then shipping up that product which is inventoried in Toronto? I am talking big things: appliances, televisions and so on.

Mr. Marshall: I am going to have to qualify, though. I am the

general manager of their trucking company. You are asking me things which I can give you vague answers to, but your sense of merchandise being located in Toronto and computer orders going back and forth is correct. What the customer commitments are or the policies, I am not exactly sure. I know when they call me to move a trailer I have two hours to be there to pick it up or I am not serving them properly. We are very much a trucking company, if I can put it to you that way.

Mr. Morin-Strom: When you make deliveries, though, in individual communities, are you delivering to a store there or to an outlet there or are you actually going to the individual customer's door to deliver items?

Mr. Marshall: Just to the stores.

Mr. Morin-Strom: So they are being off-loaded from large transports on to to the smaller Sears trucks you see driving around the community.

Mr. Marshall: Our operation is almost exclusively the large highway trailers, the 45-foot, 48-foot trailers. We do not run any city delivery operations at all.

Mr. Morin-Strom: We see a lot of these little Sears trucks doing the city deliveries. They are not owned by your firm? Who are they owned by?

Mr. Marshall: You have to be very careful and look for the strip chart on the door that says SLH Transport. If you can find that, you will know it is ours.

Mr. Morin-Strom: So they are owned by the retail stores themselves.

Mr. Marshall: Yes. If it says "Sears Canada" on it, as a strip chart on the driver door or the passenger door, then that is a Sears operation. If it says "SLH Transport," it is us.

Mr. Morin-Strom: What about your business with the United States? How much of your haulage is—

Mr. Marshall: We only operate in Ontario and Quebec. We do not go to the US. We do not go to the Maritimes. We do not go to the west.

Mr. Remedios: Sears uses a common carrier to bring it in. We do not get involved in that.

Mr. Marshall: Sears does not run a trucking company. We are very unusual and unique to the Sears Roebuck organization. They do not have a trucking company.

Mr. Morin-Strom: Is Sears restricting you from competing?

Mr. Marshall: No. Access to the market.

Mr. Morin-Strom: Then why would they not let you get involved in competing even on their own product coming in and out of the United States?

Mr. Marshall: We could, but I guess with the character of our company and our employees, you cannot get into that kind of business, if your driver is used to being home every night. We are in quite a fixed scheduling environment, so to speak. There is ample business for us to balance Sears

Roebuck and source shipments back and forth to the United States, but we are just not that kind of company.

Mr. Morin-Strom: If you are looking strictly within Ontario, it would appear that you have no real interest in one of the key issues, the reciprocity issue, which has to do with the international trade and the positioning of companies that are trying to compete back and forth between the two jurisdictions. Are you making a judgement on that issue?

Mr. Marshall: I have an opinion on it, if you like. The difference of intrastate trucking versus intraprovincial trucking is massive. If you look at the United States, there are essentially only three states that are big enough to get concerned about intrastate traffic, which would be New York, California and Texas. Any long-haul carrier does not have economic difficulty in finding freight out of states. If you want to know the basis for that, I go down to the United States a couple of times a year and deal with about 200 different carriers at various conferences. It is not a problem.

Mr. Morin-Strom: You are saying there is not a significant intrastate market in Michigan?

Mr. Marshall: I am saying it is not a problem for a carrier who is going into Michigan to get volume out of Michigan. If he is dealing with trying to get 60 miles or 100 miles, he has a difficulty.

Mr. Morin-Strom: From what we have been hearing, though, there is a considerable difficulty in transporting between points within Michigan, a market which in fact is larger than the Ontario market, a state which has a population significantly larger than Ontario and with many major centres.

Mr. Marshall: The conference that I attend is basically truckload carriers down in the States, and they are operating between states, not within states. They are having a very successful business development, they are doing very well and they do not seem to have a problem, so I have a question as to whether Canadian carriers would have a problem.

Mr. Beer: Mr. Morin-Strom has touched on some of the questions I had, but perhaps we can pursue some of that a bit further. Leaving aside reciprocity, leaving aside our going into the American market and the Americans coming up here, your first point is that this bill is important in terms of making it easier for trucking companies or firms to get into the market. That is based on experience you have had, and you gave us the example of Domtar.

Mr. Marshall: Yes.

Mr. Beer: That is for openers. The concerns that many have raised with us have related to the reciprocity question. I think you made the point that you are the only Sears-linked trucking company. I was trying to figure out whether we can compare you to SLH Illinois or SLH California. We cannot do that.

Mr. Marshall: No, there is not really a comparison.

Mr. Beer: In terms of other trucking firms, say, in the greater Metro Toronto area, are there many that operate as you do where they are trying to get it up so that the driver is at home at night, or are you quite unique in that sense?

Mr. Marshall: I guess the way I would answer that is that more and more are moving to that. Dick Baker, I believe, spoke to you a while ago. He has gone public, saying that is now what he is trying to do in his operation. Frankly, it is a change in the industry that is necessary. The hours of work that the drivers have been putting in for the past number of years are astounding; 70 or 80 hours a week is not out of the ordinary. If you are a driver-owner with \$120,000 in a tractor and getting paid on the mileage rate, you have to be out there. That is how you are going to pay for your truck.

Mr. Beer: Let's say there is a firm in New York state that has been doing a lot of western New York Sears traffic, Bill 88 goes through and we have the federal legislation. As I hear those who are concerned about American penetration back here, what is it that says to you that ain't going to happen or at least it ain't going to happen with you? Presumably, the arguments that have been advanced in terms of depreciation, in terms of taxes, in terms of a whole series of things which would appear to benefit American truckers are still going to play. I assume that Sears' and Sears Roebuck's link to you is: "If you provide us with the kind of service and at the cost we think is good, you'll do our business. If you don't do that, you're gone."

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Mr. Marshall: Yes.

Mr. Beer: I was trying to think—and I guess it was part of the question Mr. Wiseman asked—is there some link here which offsets some losses you might have through other means? Clearly, you operate as a totally independent trucking firm in terms of the business side. For the sake of argument, why would SLH in Buffalo not be saying, if it existed and was doing all kinds of work there, "Hey, those guys run a good operation up there, but we can do it cheaper and they can't meet us," because of these other arguments that have been advanced?

Mr. Marshall: You have done a lot there, but first, would I be concerned about Americans coming up? We have already heard from a couple of presenters that a large number of licences are being granted. I think Peter Baird said 98 per cent of applications are granted. I think we can probably provide statistics to say that a number of those are American companies.

My suggestion is that an awful lot of large American companies are already here now. If that advantage or disadvantage exists, it exists now and is not really going to have anything to do with the bill which is being proposed. I am not capable of saying exactly what that advantage is now, but I can say, from our standpoint, we feel it is economically very important for us to be allowed access into the trucking market so I can deal with my business and be as economical as possible in view of the coming competition.

Mr. Beer: I am trying to think this through in the sense that a number of the various trucking groups which have been here have been opposed to it because of what they see as increased American competition; so hearing from someone who does not necessarily think that is going to make it any worse is a bit novel, certainly this afternoon. I want to focus on those reasons, because presumably the same factors which would give an American firm an advantage could impinge upon you just as much as they could on the trucker in Haldimand or Norfolk or up north.

Mr. Marshall: I cannot answer for the others, but I can tell you that my corporate operating cost is significantly less than what these guys are quoting. If I got \$2.20 a mile in revenue, I would be a bank. We do not need \$2.20 a mile to be economical in our company. I am not as worried about what is happening. Just in case there is a question, there are no subsidies to our company. We are a wholly separate and fully costed operation. Why we can do it and they cannot, I am not sure.

Mr. Beer: In terms of your employees' wages, benefits and so on, you would think you are as competitive as the next firm or better?

Mr. Marshall: I have a 37-company wage survey, which includes benefits, that suggests we are 18 per cent above the average carrier.

Mr. Beer: In your mind, if an American firm were trying to get at your business, if the legislation went forward, how significant are the differences in terms of depreciation and the tax situation and so on? Would that be a significant element?

Mr. Marshall: I just do not know. I have done probably as much reading as the next guy and they have me confused. I just do not know.

Mr. Wiseman: Do you own your own rigs or do you lease them?

Mr. Marshall: We own our trailers. We have 1,800 trailers. We usually buy about 100 a year, in excess of \$2 million. We buy Canadian product. The majority of the tractors we have are on a full-maintenance lease arrangement with various leasing companies.

Mr. Wiseman: Would those leases be south of the border?

Mr. Marshall: No. Inter-Can, Ryder, Rentway; normal leasing companies.

Mr. Brown: I think most of my questions have been answered already. I was interested, as you are unique, in the Sears organization. You may not know this and this may be an unfair question, but in the percentage of cost to the company in terms of the selling price of their goods to the consumer, do you have any idea how Ontario relates to various American jurisdictions? I understand that before 1980, for example, before deregulation of federal transport in the United States, their regime was much stricter and much more difficult even than the present system in Canada, and that there was a dramatic drop in freight rates and what not.

Mr. Marshall: Yes.

Mr. Brown: There are a number of states, Wisconsin, for example, which are deregulated internally also. I was wondering if you have any idea how freight rates come out from Sears' point of view? Not from its truckers', but from the distributor's point of view.

Mr. Marshall: It is a very interesting question; it is kind of like pulling out a crystal ball. However, we have tried to do that because we have put together a five-year business plan. We are predicting ourselves that we are going to have to compete with 10 to 20 per cent rate reductions in certain lanes of traffic. We also believe there will be certain lanes of traffic SLH Transport should not be in which we are currently carrying. We will give that

up to somebody more economical than us, but there are other lanes of traffic—Montreal-Toronto, as an example—where we feel we can probably beat anybody's service with a minimum of 30 trucks a day. We can pick up at four o'clock in Montreal and have it at your door at eight the next morning, guaranteed.

There are certain lanes we can be in, we should be in, and there are others which we would have to adjust and probably get out. I think that is the kind of thing that not just private carriers but common carriers are going to have to do. Honestly, I think that is the rationalization this bill is looking for. We have 23 per cent empty miles, where we are driving down the highway with a box full of air. That is not exactly economical. You bring other private carriers in here. I am a director on the Private Motor Truck Council of Canada, and it is virtually the same thing.

That is the rationalization which is going to take place. It is going to take place for carriers, it is going to take place for private carriers and I submit that it is going to definitely be to the benefit of the province.

Mr. Brown: But you cannot give me any figures from the American experience of what rate reductions would have happened?

Mr. Marshall: Yes, I can, actually. We have been in our studies looking at American carriers. We happened to get annual reports for US carriers for 1987. I will just run through this as briefly as I can.

The 1987 annual report of Arkansas Best: \$732 million dollars in sales, a net income of \$8.8 million. Quotations in the book: "Faced with severe rate competition, we chose to maintain a disciplined pricing policy which allowed us be competitive. Uncertainty about freight rate competition, the national economy and consolidation within the motor carrier industry led us to approach 1988 with caution."

Consolidated Freightways commented that their prices are at 1984 levels. Consolidated Freightways is a \$2-billion trucking company.

Roadway Services, which is a \$1.9 billion company: "Intense price competition, however, resulted in a decline of 5.9 per cent in net freight rate levels from 1986. At the end of 1987, net rate levels reached a six-year low. Deep discounting has left the industry with net pricing levels equivalent to those of 1981."

I will just list the other ones: Yellow Freight, Carolina Freight and Overland Express. There are six large American carriers, all of which commented about rates and how they reacted by becoming more efficient.

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Interestingly, of the three Canadian carriers we were able to get annual reports for—CP, Tri-Line and Trimac—not one made a statement about rate discounts or rate competition. I personally would conclude that there is rate competition in the United States. The carriers are meeting it by being more efficient. It would look like that has not quite hit in Canada yet. I would say there are discounts out there. What it is going to be, I could not tell you, but it looks as if they are operating at the early 1980s rate level. That is the best I can answer.

Mr. McLean: If you had not had the problem with the transport board, would you have been here today making a presentation?

Mr. Marshall: Yes.

Mr. McLean: The other delegates who have been here talked about a level playing field.

Mr. Marshall: Yes.

Mr. McLean: Do you feel this legislation would allow that?

Mr. Marshall: Perhaps my level playing field is different from theirs. All I want is an opportunity to compete. Earlier it was commented, "If you want to get into the business, maybe you can just buy an authority." The process for buying an authority is identical to the process of applying for one, and right now it is a reverse onus where the purchaser must prove public need and necessity for that to go through, so that the ability to get into the transport business right now is definitely restricted as far as we are concerned.

Mr. McLean: And this will solve that?

Mr. Marshall: Yes, sir.

Mr. McLean: Which we agree with. But to allow the United States to be involved to the extent that I see the bill will allow, do you think it is going to have an advantage with cheaper fuel and all the things that have been mentioned?

Mr. Marshall: It is interesting. We were at a suppliers' conference yesterday and we were trading stories back and forth about the Americans coming up here. They may have a tax advantage and they may have some price advantage, and I suggest that might be good in the spring, summer and the early fall, but it is amazing what happens to their equipment in the wintertime. They cannot compete with us in the wintertime.

Mr. McLean: The last question I have is, do you have any depots in Ontario?

Mr. Marshall: Yes, at Kingston, London, Toronto and Barrie.

Mr. Pouliot: I know Red Rock fairly well. It is about 850 miles by road, using Highway 17, from Toronto. I live in Manitouwadge. We are most familiar with your catalogue; it is certainly a very much valued essential service. We in small communities do not have the policy of choice. I, like others, from time to time have used the catalogue for ordering and have been fully satisfied with Sears. You service some 483 Sears units; some of them are stores and some of them are depots or small businessmen handling on behalf of Sears.

Mr. Marshall: Yes.

Mr. Pouliot: Okay, so you would leave with a truckload, just go in per order and satisfy the customer. Your problem is that except for the few goods being returned because people made a mistake in ordering, I assume that you are coming back empty.

Mr. Marshall: Twenty-three per cent.

Mr. Pouliot: You have a problem with backhaul really.

Mr. Marshall: Yes, I would say we, SLH, have a problem with backhaul and Sears has a problem in terms of nobody else seems to be competitive enough to do the business better than we do.

Mr. Pouliot: If we hit a snag with Bill 87 and Bill 88 or if there were a change of heart, which is doubtful, on the part of the government and it said, "Well, Mr. Marshall, we hear you loud and clear; we will rectify the backhaul problem; you will have complete accessibility to backhaul," how important would that be in terms of satisfying your needs? If they would say, "We won't deal with Bill 87 and Bill 88; there is no need to do that; we will listen to the wisdom of the opposition and fix the backhaul issue," would you be somewhat satisfied, less than satisfied or totally satisfied?

Mr. Marshall: I would have to put it to you by saying, "I am the senior person in a trucking company responsible for the profitability of the trucking company, and you have helped me." However, there are many other opportunities that could be realized.

By doing what you are suggesting, I am still going to have to give up some of the work that I am doing—because I should not be doing it because there is no backhaul or somebody else is more efficient than I am because they have a better coverage in that lane. So what you are suggesting is that we give up some of our business, but we not be given the opportunity to replace that with other business. I would take exception to that.

Mr. Pouliot: What kind of product? I am curious. In terms of Domtar, I know Mr. Hessian, who is the manager.

Mr. Marshall: Paper.

Mr. Pouliot: Naturally, paper. So you were to come back with a load of paper?

Mr. Marshall: Yes.

Mr. Pouliot: Using one of your Sears trucks?

Mr. Marshall: Yes.

Mr. Pouliot: You could do it, but it would take a long time.

Mr. Marshall: It took us 14 months to do it. We had the carrier objecting to the application, and yet the customer did not have enough truck volume. The customer said that he would take anybody's truck.

Mr. Pouliot: The \$40,000 that you spent, was that lawyer's fees, obtaining licences, delays and so forth?

Mr. Marshall: Yes.

Mr. Pouliot: I guess their idea of a level playing field is again different from ours.

Mr. Marshall: The OTA has mounted a very fine lobby. I admire what

they have done. If I were a member of the OTA and had my operating licence and I were in a defensive position, I would think they had done an excellent job.

They keep changing what the problem is, whether it is free trade, whether it is a level playing field, whether it is open competition or disclosure of company plans or whether it is safety. All of that keeps changing. The fact of the matter is that what they have done is they have done an excellent job of stopping people from getting into the business.

Mr. Pouliot: With respect, one cannot really blame the OTA. Maybe they were was just following the mood.

Mr. Marshall: If I were a member of the OTA, I would be very satisfied with the job that they have done. You mentioned or somebody mentioned earlier that there were 800 members of the OTA. Keep in mind that there is about the same number of dollars being shipped by a private carrier.

Mr. Pouliot: What are the chances with the regulation that Sears would consider opening the doors to a new trucker?

Mr. Marshall: I would say they have to.

Mr. Pouliot: Would you go to a broker-operator?

Mr. Marshall: No. It would have to be a competitive trucking company, but we in our five-year plan are saying that that should be part of their strategy in their transportation of their merchandise.

Mr. Pouliot: Would you consider hiring, therefore, US truckers?

Mr. Remedios: Sears still today spends a lot of money with common carriers to other provinces, even within Ontario.

Mr. Pouliot: But if a US trucker came in and said: "I will do better than your wholly-owned subsidiary or your wholly-owned company, SLH. I will undercut you by 10 cents a mile," and if Yellow Freight System or Roadway Express came up and said: "Well, you are a big operation. We will do better cheaper," what would you do? You are a businessman.

Mr. Marshall: I think you have to combine rates with service. The need, as you understand, in that electronic order-processing and guarantee is that they have to have the merchandise moved. The majority of the American carriers coming in here are long-distance haulers.

What Sears and a lot of other customers are looking for is very specific, planned just-in-time kind of service. I doubt the Americans could do what we do, which is fluctuate from 30 loads to 60 loads a day out of Toronto to Montreal. When they had a truck here, they would look for the business, but they would not be able to commit to supply.

Mr. Pouliot: Maybe we can have it eight different ways, again, with respect. But if he is going Toronto to Montreal to New York and he is going back empty, would it not be difficult to compete with them?

Mr. Marshall: It would be very difficult to compete with them, but the problem is that he would not be able to guarantee that he is going to be there every day.

Mr. Pouliot: That is a good point. So there is more to it:

Mr. Marshall: Yes, very much so, especially for the customer who purchases a fridge and wants it four days later.

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Mr. Richmond: Just in relation to Mr. Pouliot's questions, as a private carrier, you have this arrangement to haul paper to southern Ontario for Domtar. If this legislation became law, do you see your company going after other arrangements, other authorities, to reduce your 23-per-cent-empty backhaul?

Mr. Marshall: Just for the sake of my own livelihood, we prefer to call ourselves a trucking company as opposed to a private carrier. We base that on the fact that we have one other licence and one other customer, which is Domtar, but I had to go get a licence for it.

However, to answer your question, currently we have a number of applications. We have two applications which were filed in March—one for a peatmoss operation in Iroquois Falls, which has a very interesting letter and is looking desperately for a carrier; we would be glad to help—and Harris-Hub Co. out of Cambridge to all points in Ontario.

A second application we had in May was for a D general freight licence for intrahauling within Quebec. A third one we did in June was an X for general freight hauling from Ontario to Quebec; we were already granted our X licence from Quebec to Ontario. That is the equivalent of having permission to take off with a plane but not being able to land anywhere; it does not do you much good. In August, we applied for a D general freight within Ontario.

To answer your question, if we got these applications, we would be a full-fledged trucking company in competition with other trucking companies.

Mr. Richmond: That would reduce your empty backhauls?

Mr. Marshall: There is no guarantee. We have to compete with everybody else, but it would give us the chance to reduce our empty miles.

Mr. Remedios: There are times, too, when we are in a shipper's plant picking up merchandise for Sears and they ask us to take for somebody else. We have empty capacity, but we cannot do it; leaving the same plant and going to the same destination, but we cannot touch it.

Mr. Marshall: Yes. We are picking up about 500 different manufacturers in Ontario and Quebec for Sears only. We are there. They know the kind of service we can provide. We get solicited regularly from those people: "When are you going to have a licence? We would like to be able to use your service."

Mr. Richmond: In your view, the legislation would increase your opportunities to engage in broader trucking services?

Mr. Marshall: As we have already been ruled by the Ontario Highway Transport Board as being a fit and able carrier and we have been able to demonstrate who we are and what we are, I am counting on the legislation helping us to be successful in getting these licences, yes.

Mr. Miller: Just a supplementary. You made a comment a while back comparing your rates to the rates mentioned by the group which was in from my area. What kind of tonnage are you hauling?

Mr. Marshall: We have a full-fledged range of tonnage. For instance, when you go to a carpet manufacturer and pick up just carpets, you are up in the high 40,000-pound range. When you are hauling—I do not know—fashions or light merchandise, you might be at 15,000 or 16,000 pounds. If you look at our trucks, about 60 per cent of our trucks are single-axle tractors because of that and the other 40 per cent are tandem axles.

Mr. Miller: Would that make a difference in the mileage rates, that you would be more efficient, because—

Mr. Marshall: Yes. There are substantial differences. In the kind of equipment we get, there is about a \$10,000 difference in price between a single-axle and a tandem. Write that off over, say, four years; that is about how long our equipment lasts.

Mr. Miller: Those guys who were in are drawing heavy loads like steel or Gyproc—basically, the big loads—and it takes heavy equipment. It has to be more expensive for operating.

Mr. Marshall: When we referred to the level playing field, we are most willing to compete. If we are not successful, we will not be around.

Mr. Beer: By the end of the day, I do not know whether this is a new question or whether it is a supplementary to something, but I just wanted to return to one point that has come up of whether in fact the industry is efficient now and is as competitive as it ought to be and that there really is not room, because that has come up. You have not stated it explicitly, but it strikes me in all of the comments that you have made that you believe very strongly that there are contracts out there, routes or whatever the proper terminology is, where you believe that you can put forward a package that would be cheaper, by the same token that there are some routes that you now have where you think, "If I own Smith's over there, I could probably do that more cheaply for a number of reasons."

Would I be right to take from what you have said to us this afternoon that: "We can operate more efficiently globally. Yes, that probably will have an impact on certain kinds of firms, but that in the overall, that will make for a better trucking industry, both in terms of the consumer, the service and so on, that is being offered."?

Mr. Marshall: Yes. It is interesting in our debate of what our strategy is and what our marketing is going to be, etc., that we see ourselves selling what we have been doing for 12 years, which is a very dedicated kind of a contract carrier to Sears. We will go to the other people who are operating major private fleets, who require the just-in-time kind of service and hopefully we will pick up their business.

I do not really anticipate picking up business from common carriers. Yes, I think they do a good job. I think they run a good show. I think it is the private carrier out there who is also running the 23 per cent empty miles that we can form a team with. We can provide them the services. It is the \$8.2 billion of private carrier business that is up for grabs, in my opinion. We are targeting ourselves to that.

Mr. Chairman: Mr. Marshall, Mr. Remedios, thank you very much. You have given us a different view of trucking with the firm that you run.

Mr. Marshall: We are just glad to get the chance to give it to you.

Mr. Chairman: That completes our task for the day. Tomorrow morning, for those of you who can join us, we look forward to seeing you at the airport around eight o'clock as we head for beautiful downtown Sault Ste. Marie.

Mr. Beer: Are you providing doughnuts and coffee for those of us who are going?

Mr. Chairman: There will be ample there, yes.

Mr. McGuinty: I have a car picking me up at 7 a.m. I have room for four at \$5 a head.

Mr. Chairman: There is an open offer.

The committee adjourned at 4:29 p.m.

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STANDING COMMITTEE ON RESOURCES DEVELOPMENT

ONTARIO HIGHWAY TRANSPORT BOARD AMENDMENT ACT
TRUCK TRANSPORTATION ACT

Monday, October 24, 1988



STANDING COMMITTEE ON RESOURCES DEVELOPMENT

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Wiseman, Douglas J. (Lanark-Renfrew PC)

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Carrothers, Douglas A. (Oakville South L) for Mr. Dietsch

McGuinty, Dalton J. (Ottawa South L) for Mr. Leone

Miller, Gordon I. (Norfolk L) for Mr. Tatham

Morin-Strom, Karl E. (Sault Ste. Marie NDP) for Mrs. Grier

Clerk: Mellor, Lynn

Staff:

Richmond, Jerry M., Research Officer, Legislative Research Service

Witnesses:

From the Ministry of Transportation:

Fulton, Hon. Ed, Minister

Hobbs, David G., Deputy Minister

LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON RESOURCES DEVELOPMENT

Monday, October 24, 1988

The committee met at 4:46 p.m. in committee room 1.

ONTARIO HIGHWAY TRANSPORT BOARD AMENDMENT ACT
TRUCK TRANSPORTATION ACT
(continued)

Consideration of Bill 87, An Act to amend the Ontario Highway Transport Board Act, and Bill 88, An Act to regulate Truck Transportation.

Mr. Chairman: The standing committee on resources development will come to order. May I first of all welcome to the committee new members who have not been on before. We appreciate your presence here.

There has been distributed to members some material from the ubiquitous Margaret Kelch of the Ministry of Transportation. We appreciate that information. If there are any questions about that, you can direct them to the minister.

Mr. Wiseman: I want some clarification. Someone asked me today if our committee had some legal people, rather than Ministry of Transportation lawyers, to help us out with decisions we may ask the minister about this afternoon, that maybe the committee had a lawyer on staff who could interpret it for us. I was not sure. I knew we had Jerry as our research person, but I was not sure if we had a lawyer at our hands to ask.

Mr. Chairman: On that, and I know you are referring to the federal court decision, the committee does not have legal counsel. If we want to get legal counsel, we could do so. We were supposed to have to go back to the Board of Internal Economy to get its permission to retain counsel. If the committee decided, after hearing from the minister and the ministry staff about that decision, that in all fairness it wanted to have independent legal counsel, then I would have no hesitation in getting that and telling the Board of Internal Economy we had done it. I do not think that would be a problem.

Mr. Wiseman: It is just my thought that if there are a lot of loopholes that we, as laypeople, are not picking up—I know we have some lawyers on staff, but if their expertise was not on what we are dealing with today—

Mr. Chairman: You want unbiased opinion.

Mr. Wiseman: —we really do not want to pass something or put something out that finds its way into the courts and becomes a real nightmare on the first of the year.

Mr. Chairman: Okay. Let us deal with the comments of the minister first—I know he is going to address that question—and you can see how you feel about it afterwards, Mr. Wiseman. We had agreed earlier that we would split the time today, if it is required, evenly among the minister, the critic for the official opposition and Mr. Wiseman's comments as well. It is 4:50 and if we go to six, that is 70 minutes. That would allow at least 20 minutes for

each presentation. I think the minister had indicated he could do his in 20 minutes and Mr. Morin-Strom had indicated the same thing. Are there any other questions before we proceed? Let us proceed then with the minister's opening remarks on Bills 87 and 88.

Hon. Mr. Fulton: Thank you very much, Mr. Chairman, for the opportunity to make comments to your committee prior to its clause-by-clause examination of Bills 87 and 88.

The committee was offered a variety of concerns and viewpoints during the public hearings and will no doubt be considering that input in its clause-by-clause analysis. I would like to offer to the committee my views and those of the government with respect to some of the major issues raised during the public hearings, those which may stick in your minds as being the dominant and recurring issues.

Much of the committee's time was spent discussing the legality or constitutionality of a reciprocity provision in the Truck Transportation Act. From my perspective in proposing this bill, such a discussion would be appropriate if the philosophical departure point for this bill accommodated that view. But for philosophic and practical reasons, reciprocity is neither appropriate nor desirable.

Specifically, the provision put forward by the Ontario Trucking Association was that carriers from jurisdictions with entry provisions similar to those contained in Bill 88 should enjoy ease of access to operating authorities within the province. However, those from jurisdictions with restrictive entry conditions should be subject to similar restrictive tests in applying for intra-Ontario operating authorities. Essentially, such a provision would discriminate between applicants based upon the entry criteria in their resident jurisdiction.

On the surface, such a tit-for-tat approach may sound appealing, "We'll treat your applicant the way you treat ours." But I would urge you to reject such an approach for a number of reasons.

When it was first passed in 1928, the Public Commercial Vehicles Act sought, in part, to protect the interests of the rail industry. Much has changed since then. For instance, the PCVA has evolved over the years to protect the trucking industry from the competitive pressures of new entrants into the market. For a time, protection of the rail and then trucking sectors may have been the appropriate policy for government to follow. In so many ways, the history of Canada and Ontario has been built on legislative and political positions that sought to nurture and encourage an economic activity. That is still so in some instances.

But since at least the mid-1970s, there has emerged a consensus that such restrictive regulation is no longer suited to the competitive pressures of Ontario's mature economy. The differences have developed over how we go about changing the regulatory environment. Included in these differences are divergent views over reciprocity. That, I suppose, is the philosophic intent behind this legislation. Is it in the best interests of the provincial economy, involving as it does carriers, shippers and, of course, all of us as consumers, to have in place legislation that protects one aspect of the economy at the expense of all others? Together with that consideration, we must ask, should legislation intended to open up the market be festooned with provisions that discriminate and have the effect of limiting access?

Different rules for different applicants is contrary to a long-standing principle of trucking regulation in Ontario, namely, that all applicants, regardless of domicile, are treated in an equal manner. The Ontario trucking industry is certainly familiar with that principle and has vigorously supported it in the past. In 1980, the US deregulated interstate trucking and as a result hundreds of Ontario carriers sought and obtained international authority. US carriers cried foul, complaining that restrictive entry tests in Canada did not allow them similar ease of access. As a result, a moratorium was imposed on Canadian operating authorities. The trucking industry argued that it mattered not that entry tests were different between jurisdictions, but that entry tests were the same for all applicants. Now the trucking industry wants that changed. It seems that this time around it should suit their purpose.

I would urge that you also consider the potential problems and impracticality of such an approach. Applicants from restrictive jurisdictions seeking authority would no doubt go to great lengths to disguise such a fact. For example, they could set up shop or make application from a fitness-only jurisdiction. All jurisdictions, provinces and states apply the same rules to all applicants. It is probable that a reciprocity clause could be considered unacceptably discriminatory by other governments and would spawn retaliatory action not necessarily restricted to the trucking sector of the economy.

For another, perhaps philosophic and practical reason, I ask members to further consider the principle of legislative supremacy when considering a reciprocity provision. Ask yourselves, do we wish to surrender to American states or to countries as far away as Japan and Australia the ability to regulate the trucking industry inside Ontario. Do we wait for Columbus, Ohio, to move before amending our legislation? That and a number of administrative horrors would be the effect of a reciprocity clause. Trucking regulation in Ontario would be an ever-changing merry-go-round. An applicant to the Ontario trucking industry, conceivably, would never be aware of just what rules apply.

The basis of the truckers' recommendation for a reciprocity provision is that they feel threatened by the potential for American-owned firms to operate freely in the intra-Ontario trucking market. In contrast to those concerns, we also heard a fair number of observations that such a situation would be extremely unlikely to occur. The Retail Council of Canada, for example, noted: "We do not believe that foreign carriers represent a major threat to the Ontario industry. As the barriers came down, US truckers have not gained a significant market share in international trucking." If that is so for transborder trucking, it is even more unlikely to occur in intraprovincial trucking.

Large US and other foreign-owned trucking companies are already well established in the Ontario marketplace. These include Roadway, Yellow Freight, TNT, United Parcel Service, Consolidated Freightways and St. Johnsburry. Indication is that those carriers have been good corporate citizens as well.

One final point on this subject is the question of constitutionality. I have been given legal opinion that the province does not have the power to include provisions of reciprocity within its intraprovincial trucking legislation, that this concept discriminates against certain foreigners and is not anchored in any valid provincial purpose. I have also received legal opinion that such discrimination would likely violate the Charter of Rights by treating nonresidents of Ontario less favourably and by discriminating on the grounds of national origin. I have weighed the arguments presented by both

carriers and shippers and have paid close attention to the cited disadvantages and threats of not having a reciprocity provision. In short, it is my conclusion that there is no need for such a provision.

However, particular concern was expressed about the increased potential for abuse of Canadian customs and immigration laws if American carriers have ease of access to intra-Ontario licences. It was felt that it would be easier for an American driver and equipment to perform a movement within Ontario which would be contrary to federal customs and immigration laws. There was concern regarding weak enforcement of those laws. To address that concern, the government proposes an amendment to the Truck Transportation Act which would provide for suspension of operating privileges if customs and immigration laws are being contravened.

The threat of American dominance is remote. The top American and other foreign-owned giants, as I have already mentioned, have an established presence in Ontario with no indication whatsoever that they have dominated or threatened Canadian-owned companies. Canadian carriers have also demonstrated that they can compete very effectively against US carriers, not only in Canada but also in the United States domestic market and in the international market.

1700

You may be interested to know that from 1980 to 1985 more than 500 US operating authorities were issued to Canadian firms, more than what had been issued to Canadian companies from 1935 to 1980. In the year prior to the US deregulation, international revenues for Ontario carriers was \$295 million. By 1984, that figure had climbed to \$514 million. Canadian carriers have a sound knowledge of the Canadian market and a strong presence in the transportation sector, which will give them advantage in responding in a direct and effective manner to the needs of our shippers. Canadian firms are well positioned to compete with new entrants.

Presentations were made to the committee on transborder trucking issues, items such as disparities in tax, price of fuel and vehicle depreciation between Canadian and US carriers. While such differences are of concern in transborder operations, they have no relevance to operations entirely within Ontario. The Truck Transportation Act deals only with trucking operations within Ontario.

I understand that it is often difficult to separate those issues—to deal only with trucking that takes place within Ontario. One must bear in mind that the TTA does not deal with transborder matters or extraprovincial applications. They are subject to the federal Motor Vehicle Transport Act.

The Canadian Transport Lawyers' Association had a particular concern about the role of the Ontario Highway Transport Board in the new regulatory system. Its responsibilities will change, but the OHTB will continue to play an important role in truck transportation, particularly in determining questions of public interest.

I do not view as valid those concerns raised respecting the determination of fitness by the ministry. Determining fitness of an applicant is primarily a review of the safety record. Such determinations are of an administrative and objective nature and can be readily dealt with by the ministry. Highway safety is a primary responsibility of the registrar, and it seems only logical to me that the fitness test rests with that office. The

criteria for determining a satisfactory safety record upon entry are the same as those applied by the ministry for enforcement purposes. It is therefore essential, in my view, that the same office handle both the fitness test and the enforcement function.

Members may wish to look at this point in this fashion. A quasi-judicial body, the Ontario Highway Transport Board, exists to consider conflicting points of view, to adjudicate differences. Surely the OHTB and bodies like it do not exist to administer what is essentially a bureaucratic test.

As an aside, I would like to comment on Friday's court decision regarding the Motor Vehicle Transport Act stated case. This decision will have little substantive effect on the issuance of MVTA licences. The processes resulting from the court decision will be quite consistent with those under the TTA. Under the MVTA, the safety rating determination, which is the principal component of the fitness test, remains the responsibility of the registrar. In fact, the federal government designated the Ontario registrar of motor vehicles as its director under the MVTA for that purpose.

The public interest test processes, of course, remain with the OHTB. There will be some need to review our clerical procedures at the ministry and the board. Aside from that, it appears the only real result of the court decision is that the licences under the MVTA will bear signatures of members of the OHTB rather than that of the registrar of motor vehicles.

However, the transportation lawyers made two specific recommendations in sections 10 and 18 to clarify some wording in the TTA, and these I support.

Some carrier representatives argued that the OHTB, in finding that the public interest would be harmed, should be able to deny a licence outright. That view should be weighed against a general consensus among shippers that there should be no public interest test at all.

There are two points in this regard you may wish to consider. First, to deny a licence to an applicant found to be fit would be contrary to a basic principle of reform. Second, provisions allowing for restrictions on the number of vehicles or staging an application allow existing carriers time to adjust. An applicant denied outright could, following sunset of the public interest test, enter the market with an unlimited number of trucks. It would seem to me that sudden, large, unrestricted entry down the road does nothing to allow for adjustment within the industry.

Some concern was expressed regarding restructuring of the industry in the form of increased merger, acquisition and the potential for concentration. In my view, restructuring or industry concentration is not necessarily bad or undesirable, as long as there is adequate competition. For example, CP has been adjusting and refocusing its operations for some time now. Certainly, other sectors of the economy have undergone such changes.

Structural changes have recently taken place in the United States with no apparent detrimental effect. During the committee hearings, the Canadian Industrial Transportation League cited a US study which recognized that there are fewer less-than-truckload firms nationwide since regulatory reform, but on 250 major routes there has been a considerable increase in the number of competing carriers. That study goes on to say, "Regulatory reform has, if anything, enhanced competition on most routes and in most types of service."

Changes are part of the evolving industry scene. Such changes continually occur throughout the entire business community. I am more concerned that the environment be a fair and competitive one and I think the Truck Transportation Act provides for both.

Trucking reform will be of benefit throughout the province, and I am confident that a major beneficiary will be the north. Support for the Truck Transportation Act does not exclusively come from shippers in the north. It comes also from trucking companies, carriers in the north. One, Trans-Provincial Freight Carriers Ltd., asked that this parliament replace the outdated Public Commercial Vehicles Act for the general good of Ontario, as it relates to the trucking needs of this province, particularly in northern Ontario.

The committee heard from both shippers and carriers at a hearing in Sault Ste. Marie. The message from shippers came through loud and clear: there is a need for greater competition, more equipment and versatility of service. The representative from Algoma Steel said that on most days they require an additional 10 to 20 trucks and on some days are 50 trucks short of their needs. Obviously, they are experiencing inadequate service.

A representative from Manitoulin Transport talked about the increase of private trucking in the north. Certainly, the benefits of reform, increased service and price competition will benefit shippers, but as in the United States, the incidence of private trucking has decreased since deregulation, to the benefit of the for-hire sector.

Another recommendation which I support is the inclusion of an amendment to section 22 of the TTA. The representative from Volume Tank Transport suggested it would be unfair to assign any costs associated with detention of vehicles unless a conviction is registered. I agree and support an amendment to ensure that an operator would be liable for costs only if found to be guilty.

A number of people who appeared before the committee asked questions regarding enforcement of laws affecting the trucking industry. I concur entirely with the viewpoint that the effectiveness of any legislation or regulation is only as good as the enforcement of it. In fact, the difficulty in enforcing the PCV Act is one of the reasons that change is necessary.

I have taken a number of steps to ensure effective enforcement, such as hiring additional enforcement staff. As well, provisions contained in Bill 86, particularly the commercial vehicle operator's registration, will result in major improvements to our enforcement capabilities.

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Other changes in our enforcement strategy will increase effectiveness. These include random and periodic opening of inspection stations, introducing an element of surprise; increased mobile patrol coverage; interaction with other enforcement agencies, such as municipal and provincial police and the ministries of Revenue, Environment and Consumer and Commercial Relations; and joint enforcement efforts with other jurisdictions at border points.

We have also embarked upon greater education and awareness of drivers, carriers and shippers.

The trucking industry is well aware of our recent increased enforcement. Recently, an individual whose job consists of designing power unit specifications to suit customers' demands advised: "No longer is the truck purchaser primarily concerned about the amount of chrome, the colour of the seats, or the bells and the whistles that are available. The major concern is, will the unit be capable of carrying a load within the legal weight regulations, knowing that convictions for weight violations will be recorded against the CVOR?"

Enforcement, of course, is related to the many concerns raised about safety. There was agreement from both truckers and shippers about the need for tough safety programs, support for the National Safety Code and the need for effective enforcement. Committee members will know of the government's commitment to highway safety, and I would emphasize again my intention to enforce the Truck Transportation Act and any safety-related regulation.

Safety matters are dealt with in Bill 86, not in bills 87 or 88, and I am pleased Bill 86 has received third reading. That legislation is directly related to the Truck Transportation Act, safety being an integral component of trucking reform.

One other item I should mention is that regulations made under the TTA and pending changes to the Highway Traffic Act will raise the level of insurance required for truck operators to \$1 million for general freight and \$2 million for those carrying dangerous goods.

In conclusion, I emphasize that this government is bringing in much-needed reform of trucking regulation to meet the needs of Ontario shippers for today and tomorrow. Neither truckers nor shippers have been able to maximize the services they provide or need because of a restrictive regulatory system which has been in place for 60 years with few substantial changes. I think it is important to bear in mind that efforts to reform have been ongoing for over a decade.

Federal trucking legislation has been in place since January 1988. Quebec and several of the other provinces have also implemented their reforms. It is important that Ontario also respond to the transportation needs of this province without further delay. Our economy has seen extensive changes and flexible, innovative and responsive transportation of goods is a crucial factor in fostering its growth.

In my view, the legislation before you responds to the needs of both carriers and shippers, both of whom have had substantial input into the entire reform process. The target of this legislation is the Ontario economy at large. I firmly believe this legislation is a step to ensuring that economic growth take place and transportation services improve.

Mr. Morin-Strom: I and our party are still very concerned about this bill and the implications it is going to have for the trucking industry in Ontario. We will be proposing a series of amendments to Bill 88, which I hope the minister will look at very closely, in order to ensure that the bill is made fairer in the treatment of that industry in the province and in the interests of the workers in the industry that we can have some assurances that the jobs will stay in Ontario and that the services will be maintained throughout the province.

I am particularly concerned about this bill because it is so contradictory to the position that the Liberal Party and the Premier (Mr. Peterson) took during the election campaign a year ago. While saying he was opposed to the Mulroney free trade deal, we have a Premier who is now opening up unilaterally a \$3-billion trucking industry in Ontario to a potential American invasion.

The Mulroney-Reagan trade deal does not apply to transportation services, but this bill, Bill 88, An Act to regulate Truck Transportation, sets out unilaterally to deregulate the Ontario trucking industry and create a wide-open market. This bill's key proposal is to replace the present entry test into the Ontario trucking business from an examination of the need for additional services to an examination of the fitness of the applicant. This change will allow the huge American trucking firms to get operating licences in Ontario without restriction.

Our concern, and I think the concern of many of the firms in the trucking industry, is that it is a cut-throat market. All but the largest of Canadian companies will be squeezed out. We will be left with a few major players, in most cases, with their head offices and administrative functions occurring in the United States. When we look at services, we are going to be severely threatened in the areas that are not on the major routes in Ontario. Surely this is a case where the Premier should be asserting provincial jurisdiction, instead of handing over a key sector of our economy to the Americans.

New Democrats oppose this trucking deregulation because we feel it will mean higher rates and less service, as well as the American domination of our important trucking industry. As one of northern Ontario's largest trucking firms put it in a letter earlier this year:

"Manitoulin Transport is not in favour of Bill 88, as we think it spells higher rates and poor service to the majority of shippers and receivers in northern Ontario. It is our opinion that more competition will do two things—affect rates and service. Rates will increase to small towns and villages and services will decrease."

Certainly, we saw in the hearings in Sault Ste. Marie the demonstration of the support of detail that Manitoulin Transport has and the extensive study it has done into this issue. The presentation they made in Sault Ste. Marie, I think, very forcefully made the case of the damages that we are going to face in the north.

Of greatest concern to all motorists is that deregulation will result, as well, in less highway safety. The 900-member Ontario Trucking Association pointed out in its position paper on new trucking reform legislation:

"There is a direct relationship between economic regulation and highway safety. Faced with increased competitive pressures and declining profitability, some carriers will be forced to give less than adequate consideration to those factors which ensure public safety."

We had the evidence from the ministry's own staff that their estimate is that 20 per cent of the trucks on the road at any one time in the province are operating illegally in some fashion or another. This kind of disregard for the laws of the province and the lack of enforcement by the ministry are an indication of the serious threat we all face from the proposals that have come from the Minister of Transportation.

Just on Friday, we had a decision from the Supreme Court of Ontario, and we have quotes from people in the ministry: "I am sure no ministry enforcement officer is going to be out there charging anyone." Again, we have a lack of consideration as to the laws of the province and a flouting of the legislative process and what has been judicially decided in terms of the laws and regulations of Ontario.

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While Bill 88 opens up the Ontario trucking market to the Americans, Ontario truckers will not have the same access to the US. More than 40 states in the United States, including the huge markets of California and most of the northeastern states, maintain systems of regulatory control over trucking within their borders that make it extremely difficult to obtain licences.

The Ontario Trucking Association, which in the past agreed with New Democratic opposition to deregulation, has proposed that a reciprocity clause be added to Bill 88 that would give licences only to American trucking firms from states that give access to Ontario companies. The trucking association has legal opinions that such a clause is constitutional. Today again, we hear the minister say that he has legal opinions that it would be unconstitutional. However, it is interesting to note that the Supreme Court decided last Friday that the trucking association's lawyers apparently know more about the laws of the province and the rights of the ministry and the Ontario Highway Transport Board than the ministry's lawyers do.

I think the point had been made earlier by the Conservative member on the committee that some independent legal judgement on some of these issues could well be wisely looked at by our committee.

While New Democrats do not favour an amended Bill 88, because we have serious concerns that the bill is fundamentally flawed, the Liberals' refusal to consider this reciprocity clause exposes their unbridled desire to push through deregulation at any cost to the industry in Ontario, at any cost to the workers of Ontario and at any cost to services we want to see provided right across this province.

I suggest, based on some of the views I have heard from legal counsel—particularly for the Ontario Trucking Association—in regard to this decision, that there are perhaps aspects of this bill which are fundamentally flawed and should be looked at again in light of the court decision. I suggest the minister and his staff should go back and review the content of this bill and the ramifications that this Supreme Court decision would have on this legislation, because it would seem to me rather pointless to be going through the exercise of passing a bill, which we are going to find out afterwards has some fundamental flaws in it. I have not heard the minister respond to that specifically in his statement, but I think that should be addressed before we finalize this bill out of committee.

At that point, that concludes my remarks. As I said, I will have a number of amendments to Bill 88, which I guess we will want brought forward for discussion at that time.

Mr. Wiseman: I was glad to hear my colleague mention all the words we heard at election time a year ago about free trade. This is really free trade, but they did not do as well at negotiating even some of this as Mr. Reisman has done.

Mr. Morin-Strom: About equally as badly.

Mr. Wiseman: I want to start off by saying that I have the greatest respect for the minister, but I am disappointed that somewhere along the line perhaps some members of his staff have not listened to all the meetings we had throughout the province and come in with some changes or recommended changes to the bills to take into consideration some of the things those people told us.

Those people are right in the business. They know what it is like. I know some of them are maybe crying the blues unnecessarily in certain areas, but in some areas I think they have a justified complaint. I was pleased to receive some information the other day, on October 11, from the assistant deputy minister where I asked at the last meeting we had if they could put down in point form when they had asked for some of the tax reductions I mentioned at different times throughout the three or four weeks or so that we were meeting. I have those dates, but they go back over a year.

I understand we had some pretty good counselling on that. We had the Peat Marwick people looking into it and so on. I would have thought that perhaps after going back to some time a year ago September, they would have had a report to say that, yes, the truckers are right on, they are not playing from a level playing field and that this government, where it is necessary and where it has the opportunity, would amend or make some changes to cushion the blow for them.

We will be bringing in three or four amendments. We will be bringing forth the reciprocity agreement. I think, as my colleague just said, that Mr. Henderson is the legal counsel, and we all know he is well known by all the people who wear the red ties as being perhaps one who wears a red tie as well. He has been chosen at different times by this government to take on some pretty heavy legal decisions pertaining to education and one thing or another. You cannot write off what a person like Mr. Henderson says with a grain of salt, as they say back in the country. We will be bringing that forward.

Also, almost every trucker who came in to see us mentioned this. For any of you who have had to make up a bank statement and show what your assets were on there, you see the assets for public commercial vehicle licences today that say \$500,000, and then tomorrow they are nothing.

I will just bore you for a minute. I had a cattle herd—and Jim would know about this—that was worth \$500,000 on paper, and when hoof and mouth disease came in, it was worth \$85,000 or \$90,000. I still had some collateral in that, but these people do not have any. When they have to go to their banks the next day or so, it could be a real hardship on them.

What I propose to recommend in my amendment is that the difference between what the federal government gives now—and I understand that is about 50 per cent but it may go to 75 per cent for the write-off of public commercial vehicle licences, at seven per cent. I propose that the government of Ontario, which has the jurisdiction—the tax in Ontario is almost twice what it is in Quebec—has room to move and to reduce the balance of that by a similar amount, until the trucker gets 100 per cent of what he paid for his PCV licence.

I think down in the United States they did this federally and it did cushion the blow a bit, and the next day the bank managers were not sitting on their doorsteps talking to them about this.

We did hear that if some small firms had to do this, with the \$50,000 to \$500,000 or so that they paid for a PCV licence, perhaps they would not be able to trade some rigs this year and keep them going for a longer period of time. It certainly would not add to the safety of highway traffic that perhaps they should have been retired but were not.

Also, I have been told that because of this court decision, there are perhaps 200 truckers out there today who got licences in the last year, who probably bought some rigs to transport those goods. I understand they could be illegally running without a licence and could be picked up. This is because of this court decision, I understand. I think at some point, we would like to know if that is true, because that puts them in a really embarrassing position.

1730

I wondered, too, about a lawyer. I mentioned it earlier in the meeting today about whether—and I was glad to see my colleague mention it in his remarks—we could perhaps get some other legal opinion to make sure these bills we are passing are not going to cause a real rush to the courts in January, or whenever they are passed. I am sure the minister does not want that either. Anyone bringing in legislation wants it to be workable, and his reputation bringing it in and everything is on the line. I am sure he wants, whenever he decides to retire, to look back at these trucking bills as being workable. I think he would want to see this happen if we decided to bring in a lawyer to clarify those areas.

When we were in Windsor we heard about rigs maybe coming over, and it might have been touched on briefly, at border crossing and with customs. I understand there is a lot being gotten away with in leasing, buying in the United States where they do not have to pay—the minister is shaking his head no, but I have heard where they have done this. I do not say it is a big thing yet, but if others found a loophole here, I am sure there will be more as they find out about it. They buy them in the US, lease them to Canada and get around the customs that way. I have felt this might have been covered in our discussions.

As well as reciprocity and the one dealing with the compensation for the public commercial vehicle licences, there was one other. When we had the people in from Quebec, they mentioned they had retained the Quebec Transport Board. To get around the decision that was made by the Supreme Court of Ontario, I propose to bring in a recommendation that the Ontario Highway Transport Board not only sit but make the decision. They said, if I recall correctly—and maybe Jerry Richmond can correct me if I am wrong—that it was working quite well in Quebec, to leave the Ontario Highway Transport Board as the person. They sit on it and make the decision. They do not refer it back to the registrar.

Having been a minister, and I talked to the minister briefly about it when we were getting a coffee, about wanting to be left in a position where he makes the final decision. I know he has delegated that, but I think it could probably come back that the minister makes the final decision. I would not want to see him get any more grey hairs than he has and come up to the chairman and myself. It does not seem like a position I think a minister would want to have himself in, but rather be able to have someone else out there to deal with it rather than himself or herself.

Those are some of my comments. I could probably go on longer but I might be repeating myself. Hopefully, when we get into clause-by-clause, I look forward to the minister coming in with amendments. He has not mentioned them today, but I would hope he would have some amendments, because those people that come in took time from their busy schedules honestly to try and give us an opinion of what they thought of it. I think they are looking out there to this government to cover them a bit where it can. If they see that the government has railroaded this through without taking into consideration some darned good, sound suggestions, I think that will just make our job that much better whenever the next election comes around.

Mr. Chairman: Am I assuming correctly that the opposition critics are not expecting a rebuttal from the minister at this point, or did you want one?

Mr. Wiseman: We might just as well use up the balance of the time, as far as I am concerned, as long as we get a little time too.

Mr. Chairman: I am going to give the minister an opportunity, if there are any comments he wants to make, especially vis-à-vis the court decision that the two critics have raised.

Mr. Wiseman: I think it would be good.

Hon. Mr. Fulton: We addressed the court decision in our comments. My friend the member for Sault Ste. Marie (Mr. Morin-Strom) made a reference that we had not addressed it, but in fact we did. Our legal counsel will perhaps be looking at it in more detail, having received a written court decision.

I remind members that the director was appointed by the federal government and the director happens also to be the registrar and assistant deputy minister responsible for regulations in Ontario. We look at that particular issue more as an administrative function than anything of particular substance.

Mr. Wiseman, you made reference to the licence fees and the values of authorities and so on, and you have discussed this with us before. As we told you, we have written to the federal authorities to see what kind of tax relief might be forthcoming from the federal government. Perhaps you might contact your friends in Ottawa to ask them to respond to our letter.

Mr. Wiseman: If I could just get a rebuttal here, I am not talking about the federal ones; I am talking about what you can do intraprovincially and have the right to do.

Hon. Mr. Fulton: It was a joint approach between our Treasurer (Mr. R. F. Nixon) and the federal Minister of Finance.

Mr. Wiseman: It is all right to blame them, but what are we doing?

Hon. Mr. Fulton: We have not got the answer you are looking for at this stage, but on the matter of the leasing of vehicles being brought into the United States, I perhaps should have mentioned in the body of our text that indeed any leased vehicle coming in pays the same duties and taxes and so on that any purchased vehicle would be subjected to; so I do not believe it is an issue we need to worry ourselves about further here.

I have a another note here—I was not making notes as you were going along—with respect to the board issuing the licences. We might as well have the OHTB issue your driver's licence. I do not see the significance of having that. We are back to square one if we attempt to do that. If we remain with them as being the arbitrator and having arbitrary hearings, we have not accomplished a thing after 10 years.

Mr. Morin-Strom: There may be other places in the bill which may have ramifications from this court decision. I understand section 7 of the bill could potentially be thrown up in the air by this court decision, in particular where we have references to things like, "The minister may direct the board," etc. There is some question as to whether the minister will have the authority to direct the board.

Mr. Hobbs: Maybe I can speak to the issue. We are dealing with some basic administrative processes, and the question is, who does what and essentially where are administrative practices carried out? In terms of fitness, the basic intent is not to have an adversarial hearing in front of a board. There is a certain set of criteria, the same as going in to get a driver's licence. If you satisfy those criteria, then the application is granted on the basis of fitness. It is an administrative test.

The intent under the Motor Vehicle Transport Act, despite the wording, was to put into place an administrative test, not an adversarial hearing in front of a quasi-judicial tribunal. It has been very clear from day one that this was the intent, for fitness under the Motor Vehicle Transport Act, looking particularly at the safety record and the ability of the applicant to satisfy certain safety requirements, the same as you go through the process in terms of a driver's licence. It was different with the public interest test. What we are talking about is an administrative test, no matter whether there are some people who would like to see the retention of some sort of adversarial and adjudication type of function carried out by board members. Whether it is the board or the ministry, the test is administrative and would be handled primarily in the way a test of—and this is the closest analogy I can draw for you—someone coming in for a driver's licence is carried out.

1740

I am avoiding legal language and lawyers here for the moment, simply to try to spell it out in simple English. In the process that is involved from day one to the end, in terms of the person applying, an application comes in seeking a licence. Under the MVTA, that could be carried out, as a result of the decision, by either the Ministry of Transportation or the Ontario Highway Transport Board clerical and administrative staff. Under the Truck Transportation Act, it is envisioned that would be the Ministry of Transportation.

The determination of safety under the MVTA, with the decision rendered, from our assessment, remains with the registrar, MTO. Under the Truck Transportation Act, the responsibility rests with the ministry, the registrar.

In terms of verifying insurance, which is another component of the test, it is basically clerical. It is the same as when you go in to get your licence changed and you present proof of insurance. That function is not a judgemental function. It would be carried out on an administrative basis by the Ministry of Transportation under the MVTA—no change. Under the Truck Transportation Act, the same thing would take place.

In terms of the processing of the fitness application, under the MVTA, that would be handled by OHTB administrative staff, not by the board. Under the Truck Transportation Act, it would be handled by administrative staff located in the ministry. This is the result of the changes. Whether the administrative, bureaucratic staff who do this job reside in the ministry or under the OHTB, the basic principles and function remain exactly the same.

In terms of the decision to hold a hearing, under the MVTA it is the OHTB that will determine the hearing. Under the Truck Transportation Act, it will be the OHTB which determines the hearing.

Under the MVTA, the public interest test decision, based on its assessment, would be done by the OHTB. This is under the revised scheme, and nothing really has changed in terms of all these steps. Under the Truck Transportation Act, it will be the OHTB, exactly the same.

Where we have a change from our assessment under the court decision is that the proof of insurance, the clerical aspect in the public interest test component, would be the OHTB as opposed to the ministry under the current decision. The same administrative or clerical task that we had envisioned for the TTA would be with the ministry.

The actual signing and issuing of the licence at the end of the day, under the MVTA, would now be the OHTB as opposed to the minister. In other words, the paper licence which goes to the individual who wishes to get a licence would be signed by the minister as opposed to the chairman of the board. Under the Truck Transportation Act, it would be the minister, but in terms of the decision from our assessment having any fundamental implications for the basic administrative steps and the way in which the processes have been structured, as I say, in our assessment under the public interest test there is no change whatever and the two acts are totally consistent. The only changes have to do with some potential rearrangement of administrative processes and that is it.

Mr. Chairman: I appreciate that answer. It would be regrettable if the ministry did not take seriously the concerns of the committee about the court decision because there are people questioning the wisdom of even proceeding with the bill at this point. I hope the committee could be given some kind of rebuttal, if you will, or explanation in writing on that court decision and why the ministry regards it as not valid as it applies to these two bills. I know the committee members are getting lobbied on this matter and I think certain committee members are legitimately concerned about it and need to have the kind of answers that will satisfy the queries they are getting.

Mr. Wiseman: I just wondered if I could ask the minister or the deputy a question. This decision which was given late last week is so serious that I wonder, if it has implications for us— I do not know how to say this; I do not want it to sound maybe the way it comes out. If it was the ministry's own lawyers who did give you this, what you told us today, then you are so close to it that you almost have to say that, but I wondered if you got a good legal outside opinion as a result of the court case.

I am sure people had the best lawyers they could get on both sides there and they would be assessing what the Ontario Supreme Court ruling was. I am surprised, just as a layperson, that you can come in today with such a clear-cut view of what actually took place over those hearings and tell us we have nothing to worry about. I would just like to know, was that in-house or

did you get it right from the horse's mouth, maybe one of the lawyers who were out listening to all this and presenting their case for the last how many weeks it took to get—

Mr. Hobbs: I, and I think my colleagues, have heard people say this means there are fundamental flaws and that there are major problems. To date, I have not seen anything substantive which would point in the direction of there being any significant implications for the basic structure and processes of this bill, let alone the MVTa.

We have obviously been working over the weekend in terms of trying to make our own assessment. We are quite prepared to do that further in depth, but frankly, no one to date has said in what way there would be significant changes between the fact that it happens to be the minister whose name is on a licence rather than the chairman of the Ontario Highway Transport Board. The basic process, with respect to public interest, with respect to fitness, is not changed by this. We would be quite prepared to go further, but based on—

Mr. Wiseman: I take it, though, that it was done by ministry lawyers and staff over the weekend, but you never got an outside opinion as to whether you are right or wrong.

Mr. Hobbs: No, but neither—

Mr. Wiseman: Sometimes when you are so close, you cannot see the forest for the trees.

Hon. Mr. Fulton: I would remind you, though, that because of all the outside legal opinions we have had, we are still at this after 10 years.

Mr. Wiseman: But you know what I mean. This is the Ontario Supreme Court. You cannot slough it off, can you?

Mr. Chairman: Can we go around the table, Mr. Wiseman?

Mr. Wiseman: Yes.

1750

Mr. Black: I want to congratulate Mr. Wiseman. We have here legislation which is designed to open up the market and he has been very clear in expressing his concern about those who might be hurt by that legislation. I know, with the consistency he and his party will always want to show, that he will probably speak in the House tomorrow against the free trade agreement, because that is another piece of legislation which opens up the market and we would expect him to be consistent. I know he will want to protect the groups that are damaged by that legislation.

Mr. Wiseman: I am not against free trade.

Mr. Chairman: I am not sure, Mr. Black, but I think they are teasing the bears.

Mr. McGuinty: I would like to comment on a point. I have the greatest respect for Mr. Wiseman's judgement and his background experience, which I certainly cannot lay claim to. This is not the first time the question has been raised regarding the validity of the legal opinion expressed by ministry lawyers.

If I were a lawyer, which fortunately I am not, I would like to bring to bear upon this dictates of common sense. If I were a lawyer in the ministry, I would interpret that really as a slight on my professional integrity, and indeed, honesty, because I think implicit within that is the assumption—veiled, but nevertheless there—that the legal counsel, upon which the minister draws, have their legal views shaped by ulterior considerations. In other words, the implication is that they shape their legal views in accordance with the preconceptions as in compliance with ministry policy. This business of bringing in outside, so-called objective legal advice, I find strange at least. I think perhaps I am warranted and I think I am worthy. I would construe that as a rather unfortunate imputation upon me, the calibre and the integrity of our legal counsel.

Mr. Wiseman: With all due respect to my colleague who just spoke, he has not hired a lawyer to work very much on his behalf. You know the lawyer works on your behalf and does what you want him to do. I am sure you can change and get another lawyer. He tries to make out the law to suit what you want him to do. I have hired enough lawyers and paid enough money, and I know that is what—

Interjections.

Mr. Chairman: Are there any other comments?

Mr. Wiseman: No. I just wondered if we could, even the ministry, get an outside opinion, because if it was done in-house, I am not saying anything against the lawyers we have, but they are employed by you and the Attorney General (Mr. Scott). I would like to see an outside opinion as to whether this does give us concern, what the Supreme Court of Ontario has passed, just to make sure.

Not only are the minister and the ministry, if we bring in a piece of legislation, kind of on the hook for this and having to defend it to the people, but we have been sitting here all summer listening to groups and trying to bring in the best amendments and the best legislation we can on this. If we put it out, it is a reflection on every one of us, if we have not checked to make sure that legally it is sound and that we are not going to be in the courts and have the minister's people dragged into the courts in January, if it passes then. That is my concern.

Mr. Carrothers: I wonder if I might just weigh in here in defence of my colleagues. I shall weigh in, yes, in defence of my colleagues providing in-house legal advice and say to Mr. Wiseman, that while legal counsel may take on the case of their client, I do not think they provide necessarily the advice the client wants if it is not appropriate advice. I think we are heading off down a false trail here when we get into the issue of inside and outside legal advice. I think we have had the legal advice. If I understand this decision, it came down last Friday. While it is interesting, it is not terribly relevant to the issue that we are dealing with before this committee. I am not sure we need to continue debating the legal advice, and certainly not at this time.

Mr. McGuigan: I want to pursue a point made by Mr. Morin-Strom on a matter of safety. He picked up a statement that had been made in one of our committee meetings by the assistant deputy minister, that 20 per cent of the trucks operating out there are operating illegally. I remember picking up on that point myself because it alarmed me, but the explanation was made that most, if not all, of that illegality was related to the operating authority,

people who simply take a truck out on the road and go from place to place hauling people's goods without any authority whatsoever, variations of brokerage and all of that sort of business. He was using that as an example, perhaps inadvertently, but using it as an example of safety violation when, in effect, it was a violation of operating authority. I think that point should be made.

Mr. Chairman: It seems to me, and I will take direction from the committee here, it would be appropriate for our meeting on Wednesday, when we next meet, if the ministry could provide, in terms that are not too legalistic, some kind of explanation of this whole situation with the court decision. Would that be appropriate, Mr. Hobbs?

Mr. Hobbs: Yes. In fact, I think it is very important to understand this in terms of the roles and responsibilities of the board, the minister, the separate fitness and public interest test processes and what we see the implications to be. Fundamentally, I do not think they are major legal issues. They have to do with who does what in terms of the process. It does not affect the basic principles. We would be more than willing to attempt to set that out—

Mr. Chairman: In relation to that court decision?

Mr. Hobbs: Yes.

Mr. Chairman: Is that okay with members? If, after that point, members are still dissatisfied, we can deal with it then. Is that okay, Mr. Wiseman?

Mr. Wiseman: That is fine.

Mr. Chairman: Mr. Morin-Strom?

Mr. Morin-Strom: The only point I have here is on the timing. The notice we have for this committee says we are meeting on Monday, Tuesday and Thursday. Now you are telling me it is Monday, Wednesday and Thursday. The October 11 notice says Monday, Tuesday and Thursday.

Clerk of the Committee: It is supposed to be Monday, Wednesday and Thursday. I apologize.

Mr. Chairman: There was talk about changing the committee. It said Tuesday, Wednesday and Thursday, but that did not go through to the House leaders' and whips' discussions, I gather, and so we decided to leave it at Monday, Wednesday and Thursday. We will meet Wednesday afternoon, same time, same place.

Mr. Morin-Strom: This is strictly Bill 87?

Mr. Chairman: To deal with Bill 87.

Mr. Carrothers: I hope we will meet earlier on Wednesday.

Mr. Chairman: Yes. I hope we will meet earlier than too. Are there any other comments before we adjourn?

The committee adjourned at 5:57 p.m.

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R-41

STANDING COMMITTEE ON RESOURCES DEVELOPMENT

ONTARIO HIGHWAY TRANSPORT BOARD AMENDMENT ACT
TRUCK TRANSPORTATION ACT

Wednesday, October 26, 1988



STANDING COMMITTEE ON RESOURCES DEVELOPMENT

CHAIRMAN: Laughren, Floyd (Nickel Belt NDP)

VICE-CHAIRMAN: Wildman, Bud (Algoma NDP)

Black, Kenneth H. (Muskoka-Georgian Bay L)

Brown, Michael A. (Algoma-Manitoulin L)

Dietsch, Michael M. (St. Catharines-Brock L)

Grier, Ruth A. (Etobicoke-Lakeshore NDP)

Leone, Laureano (Downsview L)

Marland, Margaret (Mississauga South PC)

McGuigan, James F. (Essex-Kent L)

Tatham, Charlie (Oxford L)

Wiseman, Douglas J. (Lanark-Renfrew PC)

Substitutions:

Carrothers, Douglas A. (Oakville South L) for Mr. Dietsch

Keyes, Kenneth A. (Kingston and The Islands L) for Mr. Leone

Miller, Gordon I. (Norfolk L) for Mr. Tatham

Morin-Strom, Karl E. (Sault Ste. Marie NDP) for Mrs. Grier

Pouliot, Gilles (Lake Nipigon NDP) for Mr. Laughren

Clerk: Mellor, Lynn

Staff:

Drummond, Alison, Research Officer, Legislative Research Service

Yurkow, Russell, Legislative Counsel

Witnesses:

From the Ministry of Transportation:

Fulton, Hon. Ed, Minister

ERRATUM

The opening page of the sitting, reproduced below, was missing from some copies of R-38b.

AFTERNOON SITTING

The committee resumed at 2:06 p.m. in committee room 1.

Mr. Chairman: The standing committee on resources development will come to order. I have just one reminder, that there was a large brown envelope handed out to you this morning. I hope you do not just file that in your exhibits case because it has your plane tickets to Sault Ste. Marie. We want you all in the Sault.

This afternoon we have the first presentation from CP Trucks. John Sanderson is here, and perhaps he will take the table. By the way, the brief from CP Trucks was handed out this morning. It is the pale blue one. Do not attach any significance to the colour.

Mr. Sanderson, I recognize your face. You have been here before. Welcome to the committee again.

CP TRUCKS

Mr. Sanderson: Yes, I have. Thank you very much. I am pleased to be here to present a brief particularly regarding Bill 88, which is the subject of my presentation.

Just by way of very brief introduction, CP Trucks is a Toronto-based motor carrier operating in all 10 provinces, from coast to coast, in a variety of businesses, including less-than-truckload, truckload, bulk hauling, parcel delivery and household moving. We have been serving Ontario since 1873, when we started a stage-coach service along the shore of Lake Ontario. We have grown, principally through internal growth, to the point where we now employ about 6,500 employees across Canada operating over 6,000 vehicles.

Our gross revenues in 1988 are expected to be in the vicinity of \$450 million, some 40 per cent of which are in the Ontario area. We have 25 to 30 terminal locations in the province. We basically serve every point in Ontario served by road for our parcel delivery, as well as for a number of other of our services.

I would like to emphasize in the presentation that CP Trucks has not opposed the orderly implementation of any stage of deregulation, whether extraprovincial, provincial or transborder. In fact, we have been very active over the last two to three years in working with both federal and provincial governments to develop new rules and regulations to govern basically the truck activities in the post-regulatory area.

I think it might be useful to touch briefly on what our objectives have been in the last two or three years of discussions. First of all, we sought to ensure that appropriate safety standards and enforcement were fully in place before full deregulation in order to ensure the preservation of adequate levels of public and highway safety.

We also sought to promote uniformity in regulations across Canada in order to ease the paper burden of motor carriers and to promote interprovincial trade between provinces.

LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON RESOURCES DEVELOPMENT

Wednesday, October 26, 1988

The committee met at 3:35 p.m. in committee room 1.

ONTARIO HIGHWAY TRANSPORT BOARD AMENDMENT ACT
TRUCK TRANSPORTATION ACT
(continued)

Consideration of Bill 87, An Act to amend the Ontario Highway Traffic Board Act, and Bill 88, An Act to regulate Truck Transportation.

The Vice-Chairman: We are in session.

Mr. Wiseman: When I came in today I could not help but notice that there were briefing books, apparently prepared by the ministry. I looked around and I saw green briefing books done up the same way for the ministry, and six books for the government members, with all the alternates and so on who sat during the time we were hearing these discussions.

I questioned one ministry official and found that they were all our researcher's notes condensed and put into these green books for the government. I feel that, as opposition, we should have those books. Here again, it looks as if there is complete disregard for the two official opposition parties in this matter.

In all the time I have sat around here, which is more than 17 years, I have never seen this sort of thing happen before. When we were the government, if we prepared them for our party, we prepared them for the others as well. I was really hurt that the minister, if he knows anything about this, would condone this sort of thing. If that is the case, if we are to be treated differently than others, I wonder why in the dickens we are sitting here at all.

I said jokingly that I pay a lot of income tax, as well as being a member, and I like to feel, if the tax is going to be spent, that it is going to be spent well and that everybody is treated fairly.

I am sure that, knowing some of the government members for a longer period of time than others, surely to gosh they would be fair too. However, if the minister knew this and has condoned it, I am really surprised and disappointed in him.

Mr. Pouliot: I wish to remark briefly on the same subject matter. I am too appalled and shocked. We have a situation where we are supposedly doing this together and the ministry condenses some notes, puts them into a package, distributes that package to members of the government, yet appears to systematically and deliberately omit the official opposition and the third party. I think it is a breach of protocol, unless the omission is genuinely unintended.

If not, the words "partisan sleaze"—

The Vice-Chairman: Mr. Pouliot, that is rude.

Mr. Pouliot: No, no. I choose my words carefully. I will withdraw that remark. In conclusion, this kind of blatant, deliberate and systematic approach to what is a democratic process cannot be tolerated.

I feel very uncomfortable being here, and my colleagues share the same sentiment, knowing very well that a document that relates to clause-by-clause, which we should be discussing, was given—rightly so—to the members of the governing party, and the two other parties that sit on the other side of the House do not have the same benefit of the document which was prepared by the Ministry of Transportation.

I do not know who is guilty in this kind of affair, but I think you will share with me that we need the same basic information to progress and do it quickly in your clause-by-clause approach. I do not feel at all comfortable evaluating until I get the same document that those people have in their hands.

1540

The Vice-Chairman: I am a little bit at a disadvantage since I have not seen the book. I see the green binders that members of the ministry staff and members of the government party have, but I have not seen the book.

I think the question that really has been raised by the members of the opposition on the committee is whether these books are to be made available to all members of the committee.

Hon. Mr. Fulton: Before my friend from Lake Nipigon (Mr. Pouliot) responds, I want to reject categorically some of the words he used. One that I think I heard was "sleaze."

Mr. Pouliot: I withdrew that.

The Vice-Chairman: The member withdrew the word "sleaze."

Hon. Mr. Fulton: Then I will withdraw my reference to it, but I would not stand still for that kind of nonsense.

Mr. Pouliot: Where is my book?

Hon. Mr. Fulton: I do not know where your book is. We have been tabling a number of documents and pieces of information along the way. Whether they were put in a three-ring binder I cannot say, but I will give you my assurance, in the interests of proper conduct of this committee and the hearings of this committee—because I do not want any reflection on myself as the minister, the ministry or my staff—to attempt find out why you do not have three-ring binders and see if there is some manner in which we can correct it. Then we can perhaps get on with the business before us.

The Vice-Chairman: Thank you, Minister.

Mr. Morin-Strom moves that the proceedings on Bill 87 and Bill 88 be adjourned until all members of the committee are provided with the same documentation from the Ministry of Transportation.

Mr. Morin-Strom: I think it is totally unacceptable that we have favouritism being shown by the Ministry of Transportation. It is one matter for the Liberal research department to put together a document for its own members, and that would be a legitimate practice, but that is obviously not what has happened here.

When I see that the ministry people have the same documents, obviously the same binders as the members of the governing party, if this is any type of department concerned about fairness, and certainly as legislators we have to insist on fairness in terms of the democratic process we are in, we have to have the same treatment, the same access to information from the ministry as all members of the committee.

It is one thing for the minister to have special information from his ministry—he is responsible for the ministry—but on this committee we are all equal members and we have to be treated equally on this committee. To this point, we have not been treated that way. I think my motion is perfectly self-evident.

The Vice-Chairman: The motion is in order. I want to remind the member that the minister has just said that he would make the books available.

Mr. Morin-Strom: How on earth can we start dealing with the bills when we do not have the information that the other members have? We cannot proceed with the two bills in a position where we have incomplete information.

Mr. Wiseman: I was really disappointed, as I said. When I walked in here today the six books for the government members were on their desks, and we did not get them. I hope that the minister did not know that this was taking place, but someone in his ministry did.

I believe, as does my colleague, that before we start into Bill 87 or Bill 88, we have to have those. We are not going to wait until tomorrow for them. We should set the bills down until we get the books and hope that it never happens again. We are all in here trying to do a job, and if the government members have been treated in a different way than we have, it is certainly not fair.

I have the greatest respect for the minister and I am sure he would agree that we should stand it down until this is done and he can give us the assurance of his ministry that this sort of thing will not happen again.

Mr. McGuigan: I certainly concur with the minister's correction of this error, but I would like to take away from some of the nasty words that were spoken. What we have here is a compilation of the evidence that was given to us during the hearings. There is no secret agenda, as has been—

Mr. Pouliot: We never said that. We do not know what you have. It is an omission and it should be corrected.

Mr. Wiseman: We just want the same thing.

Mr. McGuigan: I agree with that, but it is information that was supplied to us during the hearings.

Hon. Mr. Fulton: I have a further comment in response to what the member for Essex-Kent (Mr. McGuigan) said. I stated earlier that the committee has received an enormous amount of information along the way. Some of us have put it in binders. I do not know what the members over here have, quite frankly. I do not know if it is the same thing that I have. I have mountains of stuff and certainly I may have some that you may not have. I just keep piling it into the binder that I started off with.

I do not know if there is anything particularly special about the fact

that I carry a green three-ring binder under my arm. I have in here what we dealt with on Monday and on previous occasions. I do not know how you keep track of your stuff.

Mr. Wiseman: I had that when I was a minister. We expect you to have that. We expect the staff to keep you informed like that, but when private members with the government are getting something that we are not, then I think that is unfair.

The Vice-Chairman: The question is not whether the members have a three-ring binder; the question is whether there is material in the three-ring binder that should have been provided to all members of the committee.

Is there any further debate? The motion has been put by Mr. Morin-Strom that the proceedings on Bill 87 be adjourned until all members of the committee be provided with the material given to the government members by the ministry. Those in favour? Those opposed?

Motion agreed to.

The committee adjourned at 3:48 p.m.

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STANDING COMMITTEE ON RESOURCES DEVELOPMENT

ONTARIO HIGHWAY TRANSPORT BOARD AMENDMENT ACT
TRUCK TRANSPORTATION ACT

Thursday, October 27, 1988



STANDING COMMITTEE ON RESOURCES DEVELOPMENT

CHAIRMAN: Laughren, Floyd (Nickel Belt NDP)

VICE-CHAIRMAN: Wildman, Bud (Algoma NDP)

Black, Kenneth H. (Muskoka-Georgian Bay L)

Brown, Michael A. (Algoma-Manitoulin L)

Dietsch, Michael M. (St. Catharines-Brock L)

Grier, Ruth A. (Etobicoke-Lakeshore NDP)

Leone, Laureano (Downsview L)

Marland, Margaret (Mississauga South PC)

McGuigan, James F. (Essex-Kent L)

Tatham, Charlie (Oxford L)

Wiseman, Douglas J. (Lanark-Renfrew PC)

Substitutions:

Beer, Charles (York North L) for Mr. Black

Carrothers, Douglas A. (Oakville South L) for Mr. Dietsch

McGuinty, Dalton J. (Ottawa South L) for Mr. Leone

Miller, Gordon I. (Norfolk L) for Mr. Tatham

Morin-Strom, Karl E. (Sault Ste. Marie NDP) for Mrs. Grier

Roberts, Marietta L. D. (Elgin L) for Mr. Brown

Also taking part:

Pouliot, Gilles (Lake Nipigon NDP)

Clerk: Mellor, Lynn

Staff:

Richmond, Jerry M., Research Officer, Legislative Research Service

Yurkow, Russell, Legislative Counsel

Witnesses:

From the Ministry of Transportation:

Fulton, Hon. Ed, Minister of Transportation (Scarborough East L)

Kelch, Margaret, Assistant Deputy Minister, Safety and Regulation

Hobbs, David G., Deputy Minister

LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON RESOURCES DEVELOPMENT

Thursday, October 27, 1988

The committee met at 3:36 in committee room 1.

ONTARIO HIGHWAY TRANSPORT BOARD AMENDMENT ACT
TRUCK TRANSPORTATION ACT
(continued)

Consideration of Bill 87, An Act to amend the Ontario Highway Transport Board Act, and Bill 88, An Act to regulate Truck Transportation.

Mr. Chairman: The standing committee on resources development will come to order. As members know, after a false start yesterday, we have agreed to proceed with Bill 87 today, clause by clause. I see a hand. Mr. Morin-Strom, on a point of order. Let's start again.

Mr. Morin-Strom: I would like to bring us back to the situation we faced yesterday and make some comments with regard to that.

Yesterday, we had a kerfuffle about the fact that Liberal members were being provided with documents, apparently by the Ministry of Transportation, which were not being provided to the opposition members, clearly in violation of historical traditions in this place. When we have a ministry being funded by the people of the province, acting in its capacity as an adviser to a committee of this sort, certainly as individual members, we all have equal rights to the information that comes out of that ministry. I recognize that the minister himself may have rights to certain information which is not provided to all the members, but when one member receives information, we all should have the same access to it.

Mr. Chairman: I think that perhaps a point of privilege might be a better way in which to raise it.

Mr. Morin-Strom: Okay. May I continue?

Mr. Chairman: Yes.

Mr. Morin-Strom: Yesterday, we agreed to adjourn these hearings on Bill 87 and Bill 88 and to continue clause-by-clause only after we had received the same documents as have been provided to the government members. Today we did receive these documents. I presume they are the same documents, though I cannot be sure of that.

However, I am very deeply disturbed about what is in these documents in comparison with some of the comments we heard from ministry staff, Liberal members of this committee and the minister himself yesterday. At that time, it was indicated to us that these documents were a compilation of information that had been gathered by the committee through its committee hearing process and information that had been provided to the committee by our research staff.

Now that I have seen the document, I see that this is far more than a compilation of information we have seen to date. In fact, there is considerable brand-new information in this document, far beyond anything our

committee has seen previously.

We can go through various sections of this document, but I would like to bring your attention primarily to section B, which is the one I find most flagrant, because it is the one dealing with clause-by-clause consideration. This is the one we are supposed to be starting in this committee. This starts off appearing to be the same document as was provided to us by our research staff and a public document on the summary of major viewpoints, recommendations and concerns regarding Bill 88, Bill 87 and so on.

When one goes through this document, one sees that after the introductory pages up to page 8, following and matching up with page 8, we have a new page which I have never seen before and, I put forth, that I do not think any opposition member has seen before, ministry comments on the remarks that have been made section by section through the bill. We have a new page in here, B-8, ministry comments; B-9, ministry comments on further section-by-section analysis of the bill; B-10 and so on up to B-35.

We have here nearly 30 pages of brand-new ministry analysis of the bill. I would view them as Liberal crib notes, as they were presented yesterday to the Liberal members of this committee. I find this to be a flagrant violation of the traditions of this House, a discriminatory action by the minister and his staff in terms of his treatment of members of this House and this committee in particular. I think we, as a committee, have to address this as a vitally critical issue.

1540

Mr. Wiseman: I would concur with what the former speaker just said. I was really surprised. I believe I asked yesterday and was told, I thought, that the contents were a condensed version of what our researcher had put forward. In the 17 years I have sat here, Minister, I have never received any documents like this, other than when I was minister like yourself, which not only gave what we had been asked in a committee but the pat answers your members would give to those particular questions.

I have the greatest respect for the minister and I think if you have been set up in this way by whomever within your ministry without your knowledge, we should know that and clear you. Otherwise our feelings towards you as a fair person may not last. We like to be fair on this side as well. I was pleased yesterday that some of the government members on the other side whom I have known for quite a while had the courage to put up their hands and vote with us. If the shoe were on the other foot, I am sure those people would want the same treatment we are asking for today.

When we get into this, if this is the way this government and in particular this ministry is bringing forth some things all of us do not agree with, and we think we are seeing it being shoved down our throats by having pat answers in here for some of the folks on the other side with you in the government, then I am really disappointed.

If that is the case, I would ask our whip to remove me from this committee because I do not want to sit where I am not being treated fairly and honestly. It just looks like a real arrogant government if the minister had anything to do with it—I hope he can clarify that—which just does not care for the process we have had around here for a long time, but rather just pushes through whatever the heck it likes. I hope I am not being unkind to the minister on this. If I am, I hope he blames whoever is responsible for it. If

we had not kicked yesterday, if we had not done what we did, we would never have known what was in those folders and found out that the answers to many of the questions were in there.

Mr. Chairman: There is a large and growing number of members who want to speak on this point, which I would say is a point of privilege, because there is nothing out of order.

Mr. Miller: I cannot agree with the opposition at all. We sat in opposition just as long as you have, Doug, a hell of a lot longer, to put it very bluntly, and we never asked the government for anything while we were there. We criticized and we did our own research. We have important legislation here to be brought before us. To work in co-operation with our federal legislation is what we are trying to do. You have every opportunity, as we go through this bill, to make any changes, anything you wish to bring forward. We do not necessarily have to accept it. I think you are getting way off the track. You are delaying it and you are not wanting to go ahead with the bill. I think it is in the best interests of Ontario to move forward. You were the government when we sat over there. We are the government and we have to take the responsibility. I do not think the opposition needs to sit over here and throw stones at us. Yesterday we paid attention.

Mr. Wiseman: In all fairness—

Mr. Miller: Just one moment. We did not ask for your research material. We could have.

Interjections.

Mr. Miller: Just a moment. Everybody has a right, and you have your research. We had it when we were there. We have professional people in the ministry giving us direction and support so that we are legally protected. Now, I am not a legal person myself, but I do trust the people who have giving us direction.

Interjection.

Mr. Miller: That is okay for you. We sat over there and we criticized, but I was never unfair to our civil servants.

Interjections.

Mr. Chairman: No, we are not going to get into any exchanges that way. We will come back to you if you like, Mr. Wiseman.

Mr. Dietsch: I would just like to add some comments from the perspective of a new person coming into this particular committee. When I was assigned to work on resources, I thought that you were supposed to be doing the job of these two bills, dealing with these two bills clause by clause, and that is exactly what I came in here to listen to. I did not come here to listen to a whole bunch of accusations that people were not being treated fairly. The report, which I took and read, was simply a report that dealt with the research that had been going on.

I think for these kinds of tactics to be used to stall legislation and to stall the important job that we have to do in this particular committee upsets me greatly. I think enough is enough and let's get on with the bill. They got the report today and we are going to spend another hour. We could

have been through a number of these points already. We have wasted more time. It is so disgusting for energetic individuals, as I am sure many of us are, trying to get work done to be caught up in a lot of rhetoric.

Mr. Pouliot: I too want to share the respect of every and any member of the committee towards not only the minister but also the ministry. What happens in process from time to time, and everyone will acquiesce, is that the ministry has been under stress. Like other ministries, it deals with a lot of money, a lot of lobby groups, and it is difficult to satisfy everyone.

The fact remains the subject matter being addressed. I think if anyone puts herself or himself in other people's shoes, what we have is a ministerial responsibility vis-à-vis the minister. We readily acquiesce that we have no quarrel with that. What we are saying—

Mr. Dietsch: Games, you are playing games.

Mr. Pouliot: No, Mr. Dietsch, let me finish.

Mr. Dietsch: Yes, you are.

Mr. Pouliot: We are not playing games. What I am saying is that there is also a supplementary. It is true that we are here collectively, regardless of which side, what our political affiliation is, to examine clause by clause and to make legislation that will benefit.

Mr. Miller: Criticize and improve.

Mr. Pouliot: Mr. Chairman, may I continue on a point of privilege, please? I did not interrupt you when you had the floor. All I am asking is reciprocity, the courtesy that I not be interrupted.

Mr. Chairman: Go ahead, Mr. Pouliot.

Mr. Pouliot: You have, in the second instance, ministerial responsibility to give "working documents to all members of the committee." This has happened as a matter of fact, as a normal part of process all through every committee. Mr. Wiseman says he has never seen it happen in 17 years. I checked with some of my colleagues. You have never seen it, Mr. Chairman; you have been here 17 years. Common courtesy and expediency are that you make all working material available, and when people have the same material in hand, then they progress to better legislation.

That is all I am saying. If we fail to receive the document on this side, it is a legitimate grievance that we say, with respect, "Where is my information?" It is a normal request and a normal reaction—no more, no less.

Mr. Chairman: The chair is getting increasingly unhappy with debating an issue without any motion before the committee. I think that if someone is prepared to move a motion that allows us to debate the substance of the motion, the chair would be much happier.

Mrs. Marland: Well—

Mr. Dietsch: On a point of order, Mr. Chairman: What is the motion that Mrs. Marland just moved?

Mrs. Marland: I said I would move the motion.

1550

Mr. Chairman: She is collecting her thoughts, I think. If there is no motion, then I think we are going to have to proceed, move on with the minister's response. I think, to be fair, the minister should be given an opportunity to respond. Is it the wish of the committee to allow the minister to respond before a motion is put? Is that acceptable to the members of the committee? I do not think it is appropriate for everybody to have addressed the issue except the minister. I think it would be best if the minister responded now, and then, if members wish to put a motion after the minister has made his statement on this particular issue, you can proceed. Is that agreeable to the members?

Mrs. Marland: I will be happy to hear from the minister.

Hon. Mr. Fulton: There have been a number of points of view expressed here, and it was my thought from the comments yesterday that we did precisely what was asked for by the committee. I indeed offered to give my green book to one of the members of the opposition, to analyse it in his leisure hours last night. That was not done, but I do not think there was anything in the book he was given today that was not in my book that I offered last night. There are no surprises here. What you have, in fact, is the same thing that our members have, the very thing we agreed to do yesterday, and I concurred in the decision of my colleagues to provide this to you. We have given you not an analysis of the process to date but some observations and clarifications.

All those—someone used the term "crib notes"—are some comments with respect to the process that most of you attended over the three weeks of public hearings, just comments. We have offered you all along comments and answers and access to staff on any point over and over across the province and in this place. All that is is a condensation of those comments to your questions and inquiries in print. That is the only difference.

We have even gone so far as to give you our amendments beforehand in printed form. We do not have yours nor have we asked for them. I think we have been totally upfront. I personally am offended that someone would suggest that we are attempting to withhold, play games, colour over or however you want to describe it. We do not operate that way either in my office or the ministry, and most of you know that. We have done everything we have been asked to do, and as far as I am concerned, with the concurrence of the chairman, we will continue to be fair and treat every member of this committee equitably. What was asked for is before you. Let us get on with the business of the committee.

Mr. Chairman: There is still no motion before the committee.

Mr. Morin-Strom: I would like to move a motion.

Mr. Chairman: Mr. Morin-Strom moves that, as a committee, we recommend to the Legislature that the issue of the Ministry of Transportation's partisan treatment of the resources committee be referred to the standing committee on the Legislative Assembly for its consideration.

Let me explain, as I understand, what that would mean so that everybody understands.

Miss Roberts: First, perhaps he could explain what he thought it meant.

Mr. Chairman: No. I am talking about procedurally now. I am not talking about getting into the debate with you on that.

If the motion is defeated, fine, that is it. If it was to pass, it would mean that the committee would be asking the chair to make a stand and make a report, as we do normally when we finish the estimates, and so forth, to the House with that recommendation. That is what it would mean. I am not speaking for or against it, of course. I am just telling you that is what this motion would mean. It would be the result of such a motion.

Debate on the motion. Mr. Morin-Strom, did you wish to address it?

Mr. Morin-Strom: I think that we should be able to proceed with other business here, and so I would suggest rather than having the complete debate on this issue here, a debate that may be very prolonged, that we proceed to refer this matter to the Legislative Assembly committee because that is the one to deal with privileges of the House, and I believe that my privileges, as a member of this committee, have been offended by the actions of the ministry.

I believe we received information which is on the Hansard yesterday, which indicates that we, in fact, were being deceived by ministry people and members of the governing party. At this point, I would like to go through—

Mr. Chairman: I wonder if there is another way you can put that.

Mr. Dietsch: That is a pretty strong comment. I object to that.

Mr. Chairman: I wonder if you can find another way of putting that.

Mr. Morin-Strom: Putting what?

Miss Roberts: Indicating you think we were being deceived.

Mr. Morin-Strom: We were misled.

Mr. Chairman: No, that is no better.

Miss Roberts: That is the same thing.

Mr. Morin-Strom: That we were treated improperly according to the normal rules of this Legislature.

Mr. Chairman: That is acceptable.

Mr. Morin-Strom: I would like to go back to the Hansard of yesterday, of which I have a copy. There are a number of comments in Hansard that I contend indicate that this document we received—there are two contentions: one is that, of course, yesterday we never did receive the document in the first place; then, even when government members and ministry staff made references to the document, they particularly contended that the document was simply a compilation of information we had already received, which today has not turned out to be true.

Yesterday, the meeting started with Mr. Wiseman referring to these briefing books. He came into the meeting saying: "When I came in today I could not help but notice that there were briefing books, apparently prepared by the ministry. I looked around and I saw green briefing books done up the same way

for the ministry, and six books for the government members, with all the alternates and so on who sat during the time we were hearing these discussions.

"I questioned one ministry official and found that they were all our researchers' notes condensed and put into these green books for the government."

I do not think we find solely our researchers' notes in here. I think there is much more in here than researchers' notes.

He goes on to say, "In all the time I have sat around here, which is more than 17 years, I have never seen this sort of thing happen before. When we were the government, if we prepared them for our party, we prepared them for the others as well. I was really hurt that the minister, if he knows anything about this, would condone this sort of thing. If that is the case, if we are all to be treated differently than others, I wonder why in the dickens we are sitting here at all."

A little further on in the discussion—of course, we had quite a discussion about these books—we finally got the first comment from someone from the government, who in fact was the minister. The minister started by first objecting to some of the words my colleague had been using: "I want to reject categorically some of the words he used. One that I think I heard was 'sleaze'." He was reminded that the remark had been withdrawn and Mr. Fulton said, "Then I will withdraw my reference to it, but I would not stand still for that kind of nonsense."

I think we are getting that kind of nonsense from the ministry and we got that kind of nonsense from the ministry yesterday. The minister went on to say: "I do not know where your book is. We have been tabling a number of documents and pieces of information along the way. Whether they were put in a three-ring binder I cannot say, but I will give you my assurance, in the interests of proper conduct of that committee and the hearings of this committee—because I do not want any reflection on myself as the minister, the ministry or my staff—to attempt to find out why you do not have three-ring binders and see if there is some manner in which we can correct it. Then we can perhaps get on with the business before us."

That seems to indicate that the minister himself did not know what was going on within his own ministry, so I have some difficulty in personally criticizing the minister in this regard. However, a little further on in the conversation—

Mr. Miller: On a point of order, Mr. Chairman: Is there a time limit on this debate?

Mr. Chairman: No, but I would encourage—

Mr. Miller: We came here to carry on, not waste a whole afternoon debating this. We can read Hansard. We were here yesterday.

Interjection: This is important, though.

Mr. Chairman: Mr. Morin—Strom has the right to address his motion.

Miss Roberts: That is right, and he can read Hansard again today.

Mr. Chairman: Go ahead, Mr. Morin-Strom.

Mr. Miller: We can all read Hansard.

Mr. Morin-Strom: We are getting to the facts of what happened yesterday. I know you do not want it all unearthed again today, because of the embarrassment for your own party, but I am planning to do so.

Mr. Chairman: Just make sure you address your remarks to the substance of your motion.

1600

Mr. Morin-Strom: We go on after a number of comments. A motion had been placed. There were comments by myself and Mr. Wiseman, and we get back to a comment, again, by the Liberals. In this case, Mr. McGuigan, speaking for the Liberals, says, "I certainly concur with the minister's correction of this error...." We certainly appreciated the fact that Mr. McGuigan assisted in ensuring we got the deferral of the hearings yesterday until we got these documents, which turned out to be so different from what was claimed.

Mr. McGuigan went on to say: "...but I would like to take away from some of the nasty words that were spoken. What we have here is a compilation of the evidence that was given to us during the hearings. There is no secret agenda...."

This was the statement. I understand Mr. McGuigan was reiterating things he had heard from ministry staff that this was a "compilation of the evidence that was given to us during the hearings." In fact, this is not a compilation of evidence; this is far more than a compilation. Sure, we have a compilation, for example, here on the clause-by-clause, of all the notes our researchers had put together. They are in here and there are some other documents in here, but we also have now the ministry's comments on all that clause-by-clause consideration.

I contend we were—you do not want me to use the word—led astray by the ministry people and by the members of the government party. In fact, if they had not gone along with our motion, we would never have had access to information that was being provided in a partisan fashion under the ministry's direction; it was going to be provided solely to one party. We had the comments in terms of research, the historical tradition of, "We're not going to share our research notes with you." These are not research notes. If it were done by Liberal research staff, that would have been one matter, but this has been done by the Ministry of Transportation which is serving all the people of this province, and as members of this committee, we all have equal access to it.

If we want, I can now further go on through the ministry comments and make the case that these comments are by no means a summary of the clause-by-clause comments in here, but are responses. For example, on page B-10, "Ministry Comments," the title to it: "Response to the Transportation Lawyers' Position on Fitness." Then we have a series of points pointing out the ministry's arguments countering the positions that have been taken by the Canadian Transport Lawyers' Association, one of the most effective documents we received during the hearing process.

Mr. Dietsch: On a point of order, Mr. Chairman.

Mr. Chairman: I do not think anything is out of order, Mr. Dietsch, but try.

Mr. Dietsch: I guess from my naïveté in terms of trying to understand how this process works—perhaps you, with many years experience, will be able to share with me how it works. I thought we were supposed to be talking about the motion. We are going into the Hansard record and now into the terms of what is in the book. I thought we were supposed to be talking about the value of sending the motion to the place where it is supposed to go. Am I wrong in that, or do we operate differently here?

Mr. Chairman: First, the motion is in order. I think that is clear. Second, whether you like it or not, Mr. Morin-Strom is addressing the reasons he has put the motion, some background information on it. I think, to be fair, that we have to allow that to continue.

Mr. Dietsch: I am trying terribly hard to be fair, but I thought I heard that same member ask in the House to delay the bill. Maybe I was wrong there, too.

Mr. Chairman: If we let Mr. Morin-Strom complete his remarks, we will get through the process faster.

Mr. Morin-Strom: Let's get back to fairness. My motion, as I recall, talked about partisanship. One of the main points of the motion is that the ministry has been partisan in its actions and treatment of this committee. I feel, as a member, that my privileges and particularly the privileges of all opposition members have been offended as a result of that. I have gone through the evidence so far of what they claimed yesterday in statements in terms of what these documents contained—not the ministry people; it was Liberal government people speaking for the ministry.

Presumably, Mr. McGuigan's comments came from what he had heard from ministry staff and from perhaps a quick perusal of what was in the document. Mr. Wiseman's comments, which I brought up in the first point—we had the quote from him—were that the ministry people had told him these documents were a compilation of our research officers' work. In fact, we now know it was not. We do not have in Hansard the direct quotes of the ministry staff themselves.

Then we have the comments from the minister as well in regard, not to knowing but presuming, I suppose, that somebody simply had taken binders and notes we had all got and put them all into one binder. In fact, of course, these are far more than just those notes we have seen before.

Now, in this section, which I referred to before the motion, section B, clause-by-clause, I believe this is the most flagrant part of the document. I have not actually looked at the other ones in the detail I could have. The others appear to have almost all new information as well, but this is the one that bothers me, because we are about to enter clause-by-clause consideration of these bills.

If we are going to go through clause-by-clause and if we have not been given access to the same notes as the Liberals, clearly that would be misuse of provincial government funds by the province of Ontario on a partisan basis. These are not funds of the Liberal Party paying its research officers to provide its own members with notes on the clauses we are going through, as it

legitimately could do; this is ministry staff that has the role of treating everyone on this committee in a like fashion.

We have here more than 25 pages of extremely detailed notes on not only separate sections, but subsections of the clauses, the responses to all kinds of submissions from groups like the Teamsters, arguments against Manitoulin Transport's submission to us during our hearings, arguments on the public interest test, arguments against comments that were made by the ministère des Transports du Québec. I do not know; I suppose I could go on with a filibuster and read through every one of them in terms of—

Mr. Dietsch: Are you not doing that now?

Mr. Chairman: Do not tease the bears.

Mr. Morin-Strom: —what the ministry was providing to its own members. I feel really offended, as a full member of this committee, that we were not getting access to the same information everyone else did. I do not believe there is any excuse for this. I believe this is a matter that has impugned the privileges of members of this committee, and as such, has impugned the privileges of members of the Legislature as a whole.

I believe that rather than have a major investigation into this ourselves in terms of who was responsible, this matter should be taken to the committee that normally deals with the privileges of the House. That is historically and continues to be the standing committee on the Legislative Assembly.

I do not believe we have the right, ourselves, to refer something directly to the Legislative Assembly committee, so I believe the way we have to do this is to report to the House and request that this matter be considered in full and complete detail in terms of what exactly happened here and the responsibility for what happened here. My motion is fully in order and will fully allay the concerns I have about it.

Mr. Carrothers: I have been listening very carefully, to use a phrase I guess we hear a little bit in the House these days, to what has been said here. I am trying to understand the issue. With the greatest of respect to my colleagues, I cannot see what the issue being raised here is. At best, what appears to have happened is that a document that should have been shared with all the members of the committee was, by oversight, not shared yesterday. This was something indicated by the minister yesterday. It was an oversight and that oversight has now been corrected. I just want to indicate that I do not see the issue here. I think it was an oversight. It has been corrected. I cannot support the motion that has been put by Mr. Morin-Strom.

1610

Mr. Beer: I was not here yesterday, and some of the members who are here today were also not here, but if I follow the discussion, a document was brought forward and Liberal members voted with the opposition that everybody should have this document. Everyone then received it. It strikes me that we are free to accept or reject anything that is in this green book. I have not gone through it all, having just received it. In fact, Miss Roberts does not even have a copy of it.

Miss Roberts: I am always out in left field.

Mr. Beer: I think the expressions of concern that were raised yesterday, and some stated again today, set out on the record the concerns members have felt. It strikes me that what was done yesterday was to ensure that all members in fact have this material. Like all material that comes before us, as members, we are free to accept it or reject it.

I do not particularly worry too much about what is said in there about various clauses because I think, individually, we have heard the various briefs. We have had discussions among ourselves and we will accept or reject that advice as we see fit. In that sense, it seems to me that our privileges have not been impugned, that members have had an occasion to express their views on Hansard in this committee as to what took place yesterday and that we should proceed, as we will have to, to a vote and then get on with the clause-by-clause and use or not use material that has been given to us as we see fit.

Mrs. Marland: I, too, was not here yesterday, so I would like to ask some very basic questions before I make comments, just to clarify my understanding of the motion.

Mr. Beer has just said documents were here yesterday which should have been shared and simply were not shared. I think, in fairness to the new members of this committee—I am saying "new," but the newest is 12 months. I would think that in 12 months of serving on legislative committees, we should all be able to understand what the process is.

I would like to ask you, Mr. Chairman, if the process, as I understand it, is correct, that there is a way of material being dispensed to members of this committee. Is that route not through the clerk of this committee?

Mr. Chairman: You put me in a difficult position. I do not want to take sides in the dispute. I can only tell you that there is a tradition around here of material being shared by all members on the committee, but there is no rule that says it must be done that way. That is why what was done was not out of order and why I was encouraging that the matter be debated as a point of privilege rather than as a point of order.

Mrs. Marland: All right. Let's look at what the mandate of the committee was. The mandate of the committee—

Mr. Chairman: Excuse me. We are addressing the motion put by Mr. Morin-Strom now.

Mrs. Marland: That is what I am doing.

Mr. Chairman: All right.

Mrs. Marland: I do not want to address the motion with inaccurate background information. As I understand it, the responsibility of this committee is to review two government bills. We were sent out around the province, at some expense to the taxpayers of Ontario, to invite input from the public to this committee. Other than actual attendance by representatives of the public who are interested in these two bills, we also received a large amount of correspondence. That correspondence, as I understand it, was sent to the clerk of the committee who in turn circulated the material to us. What we have now, through one means or another—I recognize that the opposition

members today have these binders thanks to the support by some government members yesterday to a motion requesting that we have this material.

Normally, after a committee has heard from the public, the researcher and staff of that committee prepare a synopsis of all the input from the public and that comes back to us in printed form, and it is that material that I understand at this point this committee should be reviewing. Then the decisions by the committee are based on the material, as prepared for us by our researcher staff person to the committee.

I have a binder in front of me which is entitled Standing Committee on Resources Development Clause-By-Clause Briefing Book. Could someone tell me who prepared the material in this book?

Mr. Chairman: You are putting me in an awkward position, because we are to be debating the motion, not asking questions that led up to the motion being put, Mrs. Marland. You are putting the chair in an awkward position.

Mrs. Marland: In order to debate the motion fairly, I am simply asking for information.

I will just give you one example, then, if it is easier. I have page 32, "Bill 88, Truck Transportation Act, 1987," with a certain kind of printing and quotes from a Mr. Fullerton, who appeared in Windsor. Could you tell me who prepared that page?

Mr. Chairman: That may be part of the material our research assistant prepared.

Mr. Richmond: I believe it is.

Mr. Chairman: Yes. I believe that came from our researchers.

Mrs. Marland: Okay. Opposite that page in my binder, I have "B32, Ministry Comments." Could someone tell me who prepared that material?

Mr. Chairman: Once again, you are trying to introduce a question into debating the motion. I wish you would address yourself to the motion put by Mr. Morin-Strom rather than asking questions. That is out of order.

Mrs. Marland: Since you feel you are unable to answer that question, I will assume that "B32, Ministry Comments," must have been written by somebody in the ministry.

The reason I have to support the motion that is on the floor is that I have a grave concern about the process of what has gone on here. In fact, what should really happen if the government prepares two bills, as it did—we had presentations on those bills from representatives of the government, we then went out and invited the public to comment on those bills and now, when we come back to deliberate on both those aspects of the bills, we have material which, in essence, contains a rebuttal of what the public has said.

I will not take the time of the committee to read an example of how it is purely a rebuttal, but I would ask the committee members, if they want an example, to look at page 32 and you will see a comment there by Jack Fullerton, who spoke to us in Windsor, and I was present at the time, and you

will see opposite a comment under "Ministry Comments" which says, "We have already embarked on such a program."

What we are dealing with is a new process for a standing committee of the Legislature, and if this new process is the way we are going to go, especially with four members of the opposition and six members of the government, at least, on every legislative committee—I think it is singularly significant that we have seven Liberal members today, just in case somebody did not have quite the right amount of support, I suppose, to cope with this challenge to this new process.

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I have to support the motion on the floor, because as far as I am concerned, what we have been experiencing here yesterday and today is a breakdown in the whole democratic process that is set up under the rules of order of our Legislature whereby government bills are referred to specific standing committees of the Legislature for review. On some, we invite the public to come in to make presentations.

If this is how we are going to do it under the new Liberal government, then we might as well save the taxpayers all the money of transporting committees all around the province and inviting the public for input, and we sure as heck might as well save the expense of sitting times of members of the Legislature on the committees when the Legislature is not sitting. We have a whole credibility question here about the process, and I do not think any Liberal member of this Legislature can support the defeat of a democratic system which has been in this Legislature from the beginning.

I do not mind that we have opposite opinions on an issue—that is what our responsibility is as elected members in this House—but I do mind when a process is threatened and due justice itself is at risk because of what has transpired yesterday and today. For that reason, I hope that in the fairness of due process the Liberal members will support this motion if only, if they are right, to prove they are right. But if they cannot stand the examination of a review of the process that has gone on here yesterday and today, then I would say that is a confirmation that it was the wrong process and has been totally mishandled, if our system breaks down when we have a majority government. This has nothing to do with partisan politics, it has nothing to do with who is the majority government, but it has everything to do with where our Ontario Legislature and its standing committees go from this day forward.

Mr. Chairman: There are a couple of other speakers. Do you want to speak or do you want to put the question? Speak? Mr. McGuigan, you are next.

Mr. McGuigan: Speaking on the point that the honourable member just made, there is no question of anybody's guilt; there was a question that an error was committed. As soon as it was pointed out, the minister immediately, without any hesitation or conferences—we did not have to leave the room—or things of that nature, corrected the error. When it came to a vote, people on this side supported the vote, because we recognized that an error had been made and it would not have been fair to proceed without members on that side having the book in front of them.

I made the comment that I believed this information was information that came to the committee. I must confess that in saying that, I did not go through all the briefs and all the Hansards that were made over the many

weeks, but looking this over I saw information, and it certainly appeared as information that had been presented to us, comments that had been made to us. If in some instances that is not correct, certainly I apologize to members for having made that blanket statement, but I honestly believed that everything in here was material that had been supplied to us in one way or another.

It is certainly true that being presented in this organized fashion, if you had not the benefit of that, it would have been a great advantage to us and a disadvantage to you, but the minister immediately made the correction. I would hope people would be big enough to recognize that errors are made. On every invoice you get, if you have ever looked at the bottom corner, there are some letters down in the bottom corner of the invoice.

Miss Roberts: E and OE.

Mr. McGuigan: E and OE: errors and omissions excepted. I was in a court one time just watching events. A man had got a load of lumber from a lumber yard. There was an error made in the invoice. He took it home. It was in his favour, and he did not pay the balance. When he came before the judge, the judge rapped him pretty hard because the man had recognized that there was an error and he was trying to take advantage of that error.

The minister recognized that an error had been made. I am not a lawyer, but I think in law cases—in fact, it involves some of the information that we were given about one of the aspects of this bill—you have to prove intent, that there was an intent to harm anyone. There was no intent. The minister immediately moved to correct the error. I think you are making too much of this committee of the government.

Mr. Wiseman: I am not going to repeat a lot of what was said earlier, but it was just brought to my attention here that we should read into the record another little area here. It is about the last statement that the minister made yesterday: "I have a further comment in response to what the member for Essex-Kent said. I stated earlier that the committee has received an enormous amount of information along the way. Some of us have put it in binders." It would lead us to believe that the only thing that was in that was the information that our researcher had and not what we found out later.

As I said before, this was the first time in 17 years—I know Mr. McGuigan has been around here for a long time, and so has Mr. Miller—that we never got the answers to those. The only time I ever got them was when I was minister. This would be maybe not quite as detailed as you would do for the minister, but getting up pretty close to the answers, as we go along, as to what the minister should be giving, as the ministry people see it. I will not go into it in a lot more detail, because I thought my colleague to my right put it well, other than to say that this is a step that has never been done before.

I know Mr. McGuigan is a fair person and he was trying to say that mistakes are made, and they are made; but in all fairness this would appear to be maybe just a little more than a little mistake. I understand that mistakes similar to this happened in another committee studying Sunday shopping hours when these green books appeared as well. So it is not just this once; it is not an isolated case. I feel that by putting it out to the standing committee on the Legislative Assembly it will get a good hearing. If the minister and the ministry are lily white on this and it was just a simple little mistake,

then I am sure the Legislative Assembly committee will come in making those kinds of comments or recommendations.

It would really look bad back in my riding and a lot of other ridings today if—and I see we have one of the whips of the government party there today sitting for the first, so whether they are being whipped into place or not, I hope not. But I hope that the people on the other side, who are fairminded, as I said yesterday, and want to see justice done and remember the days when they sat in opposition, I know they cannot say that we treated them this way. If, as I said to a couple of them earlier, that has been done by Liberal Party researchers, that is one thing; and that is your question, Gord. But when it is done by the ministry people, that is another.

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Let's get to the bottom of it. As you have mentioned, let's get on with the vote. I only urge the members of the government to really think about this. Do not be whipped into it. Let the standing committee on the Legislative Assembly review it and make the decision, because you are not always going to be sitting with the government and you will want to see that fairness is done in this case and by whoever rules this province in the years to come. Some of you are young, you are going to be around for a while and it does not always mean you are going to sit with the government. You could be in opposition.

You are starting something that we do not want to see happen around here. I do not want to see it happen. It has never happened in 17 years and I do not want to start to see it now where government members get treated differently in these committees than backbenchers of the opposition.

Miss Roberts: Very briefly, because this has gone on for a period of time and I have received a lot of information with respect to it—I was not here yesterday—I appreciate the fullness with which Dr. Morin-Strom spoke with respect to it and also the comments made by Mr. Wiseman, with the exception that I am not a whip. Bad news; I have not been made one yet. I wish I were, maybe, for certain reasons.

Mr. Wiseman: I thought you won that yesterday.

Miss Roberts: Caucus chairman. Thank you for the promotion. I understand money goes with that. I appreciate that.

I would like to point out also that I was here at the beginning of the hearings and had been involved in this for a period of time. Although today I have no book in front of me, I had a chance to look at one briefly before I came into the committee room. I think there are some things that have been brought forward to my attention that I would like to put on the record, that all of us understand the committee structure very well and that all members of the committee are to be treated in a fair and like manner.

My understanding of the information that has been given today by all sides with respect to that is that yesterday something occurred which was debated and concurred in by members on the government side, that indeed this information should be given to all people. I do not even know what the debate was or anything. I have heard various comments and done extensive readings from Hansard concerning that. It would indicate quite clearly to me that what occurred yesterday was that there was an oversight. Indeed, by the comments Mr. McGuigan made himself and that were read to me very kindly by my friend

across the way, he had not had this material in front of him for large, extensive periods of time.

No one knew what it was. There was no prejudice to anyone. Everyone was walking in together. Because of Mr. Wiseman's understanding of the rules, he brought it very much to the attention of all people here, and it is greatly considered by all people who were here yesterday to be an important point and, indeed, all members immediately were given a book. Perhaps now everyone would feel better if members on that side switched books with the members on this side to make sure the trust was brought back, because what you are saying is the trust is not there. Whom do you not trust? That is a very important point.

I did not have the privilege of going from place to place and hearing all the evidence that you people have heard. I do not know if there is anything new in there, because I have not followed Hansard as well, and you people have had that, but it is now before the committee. The research and the comments by the ministry that I understand are on part B are for all of us to look at, and we can either accept or reject those comments.

I think it is very important that we look at just what the motion before us is and what it would do. There are other steps that my friend opposite may take if he wishes to do so with respect to it, but I think it is important that there was no particular prejudice to any member of this committee, because no one had seen or gone through or developed these books on the side, one side or the other. Because of the quick and appropriate thinking of Mr. Wiseman, it was brought to the attention of all, and by the understanding of the minister, it was dealt with. I think it important as well that I see no reason, from my dealings and from my speaking with the ministry staff with respect to this particular committee, to believe the ministry was trying to undermine the members on the opposite side.

There is no evidence—I should not use the term evidence—there is no information before us today that would indicate that at all. I think it very clear that there has been a full, frank and I would hope final discussion with respect to this particular point and this point of privilege. I will not be supporting the member's motion.

Mr. Pouliot: I will be very brief. I find the irony, to say the least, amusing, that we would spend the last couple of days in the House—

Miss Roberts: It is my fault again.

Mr. Pouliot: —and now we are paid the compliment of a visit from someone—not you; everyone likes you, and why not?

Miss Roberts: I thought so.

Mr. Pouliot: The thing is that with the proposed tenure or the good news that is about to happen, we were sorry to hear about the good news because we just lost about two days of sitting.

I do not want to prolong the conversation. I think pretty well everything has been said. The reason I do not wish to be too long is that I have a voluminous—can I say this in English?—quite a thick document that I wish to read into the record regarding the recent decision of the Ontario Supreme Court and its ramifications on what is being proposed here. It will take some time to do that. I do not want to become the victim of a stall.

Interjections.

Mr. Pouliot: You might as well go home because my point is well researched and it is right here. I am satisfied. I can be judged—this is a secret; I know you will not share it with anyone. There are no members of the press here. Hansard, be quiet. I will be judged very harshly on the motion. If I bring something up, I feel that there has been a breach of ethics, that what has taken place on a daily, regular basis has been a breach, or if it is "sins of omission," I can live with that providing I sense that the situation, like Mr. McGuigan and Miss Roberts have said, is being rectified. Enough is enough.

By the same token, it has been mentioned that we were dealing not only with ministerial notes, a compendium, a rationale to justify intent and spirit, but some people saw some rebuttal position in the documentation which led those people, and I think it is a normal reaction, to believe that the action, the omissions yesterday were indeed systematic and deliberate.

I do not believe that. I am satisfied with the rectification. I do not believe for one minute that the minister would systematically, deliberately mislead anyone on the committee. I do not believe Mr. Fulton is capable of deliberately and systematically misleading anyone on the committee. I am satisfied with what has been proposed.

Mr. Chairman: In other words, you have come not to bury him, but to praise him.

Mr. Miller: I just want to make one point very clear—I am speaking for myself—that I do not like somebody on the other side saying that we do not know what we are doing. I did not vote for that bill yesterday because—I do not think it was necessary to unfold it like it has unfolded. I felt the information we had—I opened the book. I have not gone over it word for word and I do not intend to. I depend on the professional people to guide us and I feel it is really a slap against the ministry people.

When you were made the offer to utilize the book yesterday, I think you just grabbed the issue and ran with it. I was not supportive of it yesterday. I am very clear today how I am going to support it. I am not going to support it. I feel we should get on with the bill and deal with it in the best interests of Ontario. That is what I was elected for and I intend to try to carry out that function, that everybody is used fairly. I am not against any member on the other side. I have lots of respect, but I am not going to be pushed around by you indicating that we made a wrong decision. I do not think we did. I just want to make that very clear.

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Mr. Dietsch: Let me just clarify a point for the record as well. Mrs. Marland felt that there were seven members on this side of the room who were ganging up on the four who were on the other side. I would like to clarify. I came to this meeting today just to sit in because I thought you were going to be dealing with clause-by-clause. Hopefully, before long we will. However, I am not a voting member today. I want to assure you that I took the time and the interest to come here to watch the clause-by-clause dealing. Hopefully, we will get on with that before I get old.

Mr. Chairman: I am sure you have learned something just by what we have debated so far.

Mr. Dietsch: Absolutely.

Mrs. Marland: Mr. Chairman, since you are allowing people to speak a second time, which you have—

Mr. Chairman: If you will do it very briefly, then we will put the question.

Mr. Pouliot: The observer did.

Mrs. Marland: Yes, and Mr. Miller.

Mr. Chairman: He was not speaking to the motion.

Mrs. Marland: Mr. Miller has spoken twice.

I just want to put on the record, in response to Miss Roberts, that I did not at any time this afternoon say that I was questioning trust or commitment or that kind of thing. I was not saying anything about individuals. I was very careful to address the process.

Mr. Chairman, when will we be able to know whether the process is changing for committees where we will now go out and speak to the public and then have ministerial comments in binders, which is a second go-around at the cat, as it were, with government bills?

Mr. Chairman: I assume that is a statement rather than a question.

Mrs. Marland: No, it is a question.

Mr. Chairman: I cannot answer the question.

Does everyone understand the motion? Do you wish to have the motion read?

Mrs. Marland: Yes.

Mr. Chairman: Mr. Morin-Strom has moved that the committee report to the House the issue of the ministry's partisan treatment of the members of the standing committee on resources development, requesting that the matter be referred to the standing committee on the Legislative Assembly for its consideration.

Mrs. Marland: I would like, whatever the term is, to call—

Mr. Chairman: A recorded vote?

Mrs. Marland: A recorded vote and to have time to call my colleague back.

Mr. Chairman: Okay. There is a requirement that if a 20-minute time is called, it must be granted to committee members, so we will come back and vote at 5:05 p.m. Can I say that we will vote at 5:05? We will not delay after that.

Miss Roberts: On a point of order, Mr. Chairman: I am just suggesting that my charming friend from the north has a lot of information he wants to give us today. Is it possible, while we wait for Mr. Wiseman to be here, that we deal with that? I just want to make sure that we go on, in the

interest of fairness, especially if he might not be here and be available in the future.

Mr. Chairman: That is an efficient suggestion, but not in order. We will come back at 5:05 and vote.

The committee recessed at 4:44 p.m.

1704

Mr. Chairman: The recess is over. I heard a call for a recorded vote, I think. You have heard the motion.

The committee divided on the motion, which was negatived on the following vote:

Ayes

Marland, Morin-Strom, Wiseman.

Nays

Beer, Carrothers, McGuigan, McGuinty, Miller, Roberts.

Ayes 3; nays 6

Mr. Wiseman: On a point of order, Mr. Chairman: Seeing that the government members were whipped into shape for this vote, I think we as opposition members should at least get a written apology from the minister for this happening. I would make a motion that we get a written apology—

Mr. Chairman: You are out of order, Mr. Wiseman.

Mr. Carrothers: On a point of order, Mr. Chairman: I just wanted to give the member a chance to correct the record. In fact, the government members were not whipped.

Mr. Chairman: You are out of order, too. That is not a point of order. Can we move on to the next order of business?

Mr. Pouliot: I think it is becoming quite clear that the chemistry is not proper here. We are not going to get anything done this week. I think there is a need to digest the new material that has reached us. With the highest of respect, I think we could go home, digest the data and come back refreshed next week.

Mr. Chairman: That is a wonderful point of view.

Mr. Wiseman: Why was I out of order in asking for an apology from the minister on what happened?

Mr. Chairman: It is not a point of order.

Mr. Wiseman: Why do I not make a motion, then—

Mr. Chairman: If you wish to move a motion, then we can debate it.

Mr. Wiseman: —that we ask the minister for a letter of apology for

what happened yesterday, seeing that we are not going to find out what really did happen?

Mrs. Marland: And an explanation.

Mr. Wiseman: If we could get an explanation, that would be good, but even a letter of apology that this will not happen again.

Mr. Chairman: Are you putting this in the form of a motion?

Mr. Wiseman: Yes.

Mr. Chairman: And the motion is?

Mr. Wiseman: That members of the opposition receive a letter of apology from the minister.

Mr. Chairman: I am having trouble with whether or not the motion is in order. Let me have a consultation with the clerk.

I am having trouble with the issue being in order because of the previous motion that was put, voted on and defeated. It is very much in keeping with the previous motion, although it is not identical. So I am going to rule that out of order.

Mrs. Marland: I would like to place a motion before the committee that pertains to the questions that were not allowed when I was speaking to the previous motion.

Mr. Chairman: And the motion is?

Mrs. Marland: My motion would be that we receive an explanation from the minister as to who wrote those pages in this binder. I identify the binder as addressed to the standing committee on resources development, clause-by-clause briefing book. In this book are pages under the heading "Ministry Comments." I think in fact there are something like 35 pages of ministry comments under the section headed "Section 8, Clause by Clause."

Mr. Chairman: The chair is going to require something more creative from the members in order to be able to regard it as a legitimate motion, different from the one which was previously put. I am going to rule that out of order.

Mrs. Marland: Was the previous motion to refer this matter to the legislative—

Mr. Chairman: To the standing committee on the Legislative Assembly, in view of a lot of what is being repeated now.

Mrs. Marland: My motion has nothing to do with referring it to the committee; it is totally different. My motion is asking the minister for an explanation as to the origin and author of the "Ministry Comments," as I have just outlined, in this book.

Miss Roberts: May I speak briefly with respect to that? That is not a motion to be put. As we go through clause-by-clause and we go through this particular information, that can be elicited from time to time. It is not an

appropriate position at this time. I assume clause-by-clause will be coming at some time, and I would suggest that the motion is not appropriate.

Mrs. Marland: What are you frightened of? Why can we not ask who wrote the—I need an explanation about why that motion is out of order.

1710

Mr. Chairman: I will attempt to give you an explanation why I regard the motion as being out of order. In the previous motion that was put and defeated were the words that in view of the "partisan treatment" of the members in the distribution of the information; I think this is a hybrid of that part of that resolution.

Mrs. Marland: No, it is not.

Mr. Chairman: For that reason, I think I am going to rule it out of order.

Mrs. Marland: I have not said anything about "partisan," Mr. Chairman.

Mr. Chairman: No, but it is clear that the information is coming from the ministry, so I am going to rule that motion out of order.

Mr. Morin-Strom: When we were debating the previous motion, there were questions put to the chair—in fact, they were questions Mrs. Marland had put intending them to go to either the minister or the ministry—that the chair ruled could not be dealt with at that time, that they would have to be dealt with after the motion was determined. Can we get on with dealing with answers to those questions?

Mr. Chairman: I have no problem with members of the committee asking questions of the minister. What I do not want to rule in order are motions that are somehow part of the previous motion that was put and defeated. If members have some questions of the ministry or the minister, that is appropriate.

Mrs. Marland: Okay, then, I ask the committee to allow me to withdraw the motion and may I, Mr. Chairman, ask the minister some questions?

Mr. Chairman: Yes, you may.

Mrs. Marland: Thank you. Minister, as identified under section B, clause-by-clause, of this binder that I have already identified as being the standing committee on resources development clause-by-clause briefing book, there are 35 pages identified as "Ministry Comments." Could you tell this committee who the author of those ministry comments is?

Hon. Mr. Fulton: On the first page, it says, "Prepared for the standing committee on resources development, Floyd Laughren, MPP, chairman. Prepared by Alison Drummond and Jerry Richmond, Research Office, Legislative Research Service."

Under table of contents—Is that what you are referring to?

Mrs. Marland: You are on the second page. Minister, are you saying

that Jerry Richmond and Alison Drummond prepared the pages under "Ministry Comments?"

Hon. Mr. Fulton: No, I am trying to clarify which pages you are asking me about.

Mrs. Marland: I am asking you—

Hon. Mr. Fulton: You said clause-by-clause under tab B.

Mrs. Marland: Section B, and Hansard will show that I asked you to identify the author of those pages listed under ministry comments, starting at B-8 and going through to B-35.

Hon. Mr. Fulton: Okay. I just want to clarify that. I only heard the section B, not the B-8. It was various ministry staff.

Mrs. Marland: At whose request were those pages prepared?

Hon. Mr. Fulton: They were done, as previously indicated, as a summary of comments that have been made along the way in the hearing process.

Mrs. Marland: You are saying, Minister, that these pages are summaries of comments made along the way. In fairness, I know it is hard for you to listen to two people. I will repeat my question. Are you saying that these pages identified as "Ministry Comments" are materials based on comments that were made along the way? Is that what you are saying?

Hon. Mr. Fulton: They are referring to comments made along the way. On page 8 are the observations and clarifications in the first instance, I gather, from the Ontario Dump Truck Owners Association, the Dow Chemical delegation and Canadian Transport Lawyers' Association. I do not see anything wrong with that. You have it; we have it.

Mrs. Marland: Did this committee request ministry staff to prepare these comments?

Hon. Mr. Fulton: I know that members of the committee, certainly individually, have asked the ministry staff an enormous number of questions, and for information. Some individuals have taken it upon themselves to meet with staff; we have offered that. Your colleague, in fact, had arranged three meetings for private briefings with the staff. He did not make any of them, but they were arranged, and that time was offered to any member of committee.

Mrs. Marland: My question is very precise. Did this committee, through the clerk or the chairman of this committee, request the ministry staff to prepare these binders with the ministry comments attached?

Hon. Mr. Fulton: If the question is, was there a motion put by and adopted by the committee at some point during the deliberations, I could not tell you. I do not know.

Mrs. Marland: Maybe the chairman could clarify that. Was there a motion? I was not at all the meetings.

Mr. Chairman: There was not, to my knowledge, a motion. I am getting a little uneasy about the process here. The agenda that went around to members of the committee called for clause-by-clause consideration of Bill 87. If we

are straying into Bill 88 and comments on Bill 88, then we should not do so, and I am getting uneasy about that. Although it is fine for a couple of questions for clarification, I do not want a wide-ranging debate on this.

Mrs. Marland: Does today's agenda not deal with Bill 88?

Mr. Chairman: No.

Mrs. Marland: Okay. Since the binder is identified as a clause-by-clause briefing book on a review of Bill 87 and Bill 88, then I will ask the question of the minister, who authorized it? When did anyone from the committee request on behalf of the committee that this book be prepared by the ministry staff? I am not questioning the work by our research officers; that is a normal process. After committees conduct hearings in this Legislature, the researchers go away and they do a compilation of the information brought to the committee by members of the public and responses to questions by members of the committee. This is an entirely new venue that we have before us, and I want to be very clear, what is its origin, and why?

Mr. Chairman: Okay. The question has been put. If we could have a simple answer, then we will move on to the business. The question has been put where the information came from, who authorized the information and who requested it. Is that—

Mrs. Marland: And was there a request on behalf of the committee?

Mr. Chairman: There was not a request on behalf of the committee.

Mrs. Marland: Okay.

Mr. Chairman: All right?

Miss Roberts: The researchers contact the ministry people from time to time and that is all part of the situation. I would like to go.

Mr. Chairman: Is there anything else before we move on?

Mr. Wiseman: Can we just have the bottom line, then, Mr. Chairman? Who within the ministry did authorize this to be done? We have been kind of going around this all afternoon and have not found out. I think the minister knows who did it, whether the minister authorized that it be done, the deputy or whomever.

Interjection.

Mr. Chairman: Order. I think it is clear that the information was provided by the ministry. Now I am not sure whether you are after who in the ministry prepared it.

Mr. Wiseman: We would like to know.

Mr. Chairman: Surely that is not the issue.

Mr. Beer: The information was prepared. Accept it or reject it; none of us has to accept it. Obviously, ministry people made comments about some of the briefs that were made. I do not know whether they are right or wrong. We

can accept it or reject it. Nothing new has happened here; nothing strange has happened.

Mr. Chairman: We have no motion before the committee and I am going to insist that we move on to the order of business. It was agreed by the committee that today there would be presented to the committee a rebuttal by the ministry on the court decision a week ago. That information, I believe, the minister now has available for the committee members.

Mr. Wiseman: In all fairness, before we leave it, this will always leave a cloud. Somebody authorized this, whether it was the minister, the deputy or the assistant deputy, and I think we have a right to know who in the ministry pulled it together, who decided what went in this book and what did not, and who made the final decision.

Mr. Chairman: Can we make this the final word?

Hon. Mr. Fulton: Mr. Chairman, I am really troubled. I do not know where the member and his colleague think they are leading in this and what they are really trying to do.

Mr. Wiseman: We just want to know.

1720

Hon. Mr. Fulton: I am trying to answer, Mr. Wiseman. I do not know what you are trying to do. Had we come in here with a basket full of jelly beans, you would have been quite dissatisfied with that. Had we come in here with any other kind of documentation, judging from the comments you have been making, you would have been dissatisfied with that.

We have very thoughtfully, and to you particularly, attempted to give all the information that is available to us. It has been digested and brought together in a document. As Mr. Beer said, you can do with it what you please, but here is what has been submitted to the committee. Here are some comments in digested form as we have gone through the piece. I do not think we could have been more fair or more open. When there was a mistake made the other day, we very clearly and quickly moved to correct it. You were complaining when you did not have the information. Now that you have it, you are still complaining. You have more information than you know what to do with.

Mr. Wiseman: I kind of think we have a right to know who authorized it.

Hon. Mr. Fulton: As the minister—

Mr. Wiseman: We have, in all fairness, research people here—

Hon. Mr. Fulton: Let me finish, Mr. Wiseman. As the minister—

Mr. Chairman: Order.

Hon. Mr. Fulton: As the minister, I have to take full responsibility.

Interjection.

Hon. Mr. Fulton: Any minister will take full credit. We also have to take full responsibility. I do not remember whether I phoned my deputy, the

assistant deputy or somebody else on staff 18 different times a day because you asked a question, somebody here asked a question, somebody on our side asked a question, but I have to assume that ultimate responsibility for directing the staff to provide information. I cannot tell you who typed it, but I could tell you where it came from.

Mr. Wiseman: The typing is not—

Interjections.

Mr. Chairman: Order, Mr. Wiseman. I think it is clear.

Mr. Wiseman: We have our resource people—

Mr. Chairman: Mr. Wiseman, you have your answer: the minister authorized the preparation of that material. I think it is clear he is responsible for that. He has the ultimate responsibility as the minister. All right?

Minister, do you have the material on the court decision?

Hon. Mr. Fulton: I have a couple of pages of notes. I understand they have been circulated to all members of the committee.

Ms. Kelch: They are in your books, at the back.

Hon. Mr. Fulton: They are in your books. You see—I will bite my tongue.

Mr. Chairman: Now, now. Do not tease the bears. Did you want to put this on the record, Mr. Minister?

Hon. Mr. Fulton: Perhaps I would read, in order to put on Hansard, on the record, the information provided by my ministry staff. It is dated October 26, 1988.

Mr. Chairman: Excuse me. It is C-18 for members in their books. Sorry.

Hon. Mr. Fulton: Now, I did not know that.

Mr. Chairman: There you go.

Hon. Mr. Fulton: The impacts of the recent Divisional Court decision on the issue of the Motor Vehicle Transport Act:

The issue is that the MVTA provides for only one body, the provincial transport board, to carry out licensing functions and hold public hearings, and fails to recognize that the Ontario law, the Public Commercial Vehicles Act, designates the minister to issue licences and the Ontario Highway Transport Board to hold hearings. When the MVTA was originally passed in 1954, it was interpreted that the minister was to issue licences. It was this interpretation that has been challenged through the courts.

All licences issued under the MVTA since 1954 bear the signature of the minister of the day. The OHTB has never issued an operating licence under either federal or provincial legislation. The wording in the 1954 MVTA has not changed with respect to who issues licences. A carrier will be licensed under

the MVTA or under the Truck Transportation Act, not both. Carriers operating within Ontario only will apply—I thought we had smoking rules in these committees, by the way; sorry.

Mr. Chairman: I wish we did.

Mr. Pouliot: The point is well taken.

Hon. Mr. Fulton: Thank you.

Mr. Pouliot: I appreciate your diplomacy, but the real sins are in the bill.

Hon. Mr. Fulton: Carriers operating within Ontario only will apply under the TTA. All other carriers apply under the MVTA.

The key decision-making functions under the MVTA do not change. The registrar continues to determine safety ratings and the OHTB continues to administer the public-interest test. The activities, which are affected, are of an administrative or clerical nature, denoted here, "See attached summary for full description of MVTA and TTA processes." I think you will see that is page 3 of the document you have in front of you.

The court ruling now requires licences to bear the signature of the chairman of the Ontario Highway Transport Board, instead of the minister. In this situation the OHTB, as a federal government agency, will issue licences under the federal MVTA, while the Minister of Transportation will issue provincial licences under the TTA.

As a result of the court decision, the appropriate method of validating 1988 licences issued under the federal MVTA will be reviewed. This is required regardless of whether Ontario is administering the existing Public Commercial Vehicles Act or introduces the TTA. In addition, the validity of all MVTA licences issued under the signature of the minister since 1954 will be reviewed in light of the court ruling.

The stated case dealt strictly with the MVTA. The Ontario government has jurisdiction over trucking within the province, and hence, it is the role of the government and the minister to determine the framework for the administration of the TTA. The roles and processes of the TTA are clearly defined. The term "provincial transport board" is not used in the TTA. Page 3 is the addendum I indicated to you.

Mr. Chairman: Thank you, minister. Do members want to make any comments on this. I think this is the first time most members have seen this paper.

Mr. Pouliot: I have not had too much time to digest the recent decision and to examine its impact on the proposed legislation. I have some questions for the minister. Is that okay, Mr. Chairman?

Mr. Chairman: Yes.

Mr. Pouliot: The recent decision of the Ontario Supreme Court—first of all, let me say with respect, sir, that it does not represent your ministry at its best; the first time and you lose. I think your legal instincts have a

lot of room for improvement, and hopefully, there will be no more lawsuits or challenges pending.

I am concerned about the judgement and jurisdiction of the board. On the granting of licences under the present system, how long has your ministry been granting licences?

Hon. Mr. Fulton: Since 1954.

Mr. Pouliot: Since 1954; that is over 30 years.

Hon. Mr. Fulton: Yes. Back, I presume, to 1928.

M. Pouliot: Nineteen twenty-eight. Ne faites pas d'humeur, mon cher ami, ça vous convient mal. I had so little time to prepare an analysis. I think in fairness to everyone, because of the importance of the decision, that we should have some time to prepare. The motor vehicle act is divided into three parts: you have the extra-provincial bus operation; part II deals with the transport of trucking operations, and part III deals with the interprovincial trucking operations of carriers that have transborder operations.

The minister will correct me if I am right. Maybe we can do this together. I am so candid; I need all the expertise. The Supreme Court decision establishes that the board must issue part I, part II and part III licences. If a carrier seeks a purely intraprovincial licence, does he go to the registrar of motor vehicles to get the licence?

Hon. Mr. Fulton: Can you repeat the question?

Mr. Pouliot: What I am saying is do you go to the registrar to get a licence? That is what your bill proposes. What the decision has said is that you go back to the board. Since 1988, because of the systematic Liberal approach—

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Hon. Mr. Fulton: I want to point out to you that we were once challenged on the same thing before and the court upheld us. I guess it is a matter of which judge happened to be sitting on the hearing board or panel that day—just for what it is worth.

Mr. Pouliot: I have heard so many awful things. I have trouble hearing. Would you please repeat that? It depends on which judge on any specific day?

Hon. Mr. Fulton: Apparently, the same case was heard previously and we were upheld in the process. I just thought I would pass that on to you. You are putting so much weight on this particular decision.

Mr. Pouliot: No. In other words, next Monday there will be an announcement in the House and our beloved friend the Attorney General (Mr. Scott) will appeal.

Hon. Mr. Fulton: I have no idea what the Attorney General is going to do on Monday or Tuesday.

Mr. Pouliot: You flinched.

Interjections.

Mr. Chairman: Mr. Hobbs wants to make a contribution here.

Mr. Hobbs: Mr. Pouliot, this is a federal piece of legislation. It may well be that—

Mr. Pouliot: We are here to talk about the impact it will have at the provincial level.

Your name was on the document. This impacts on the provincial legislation. You are saying it does not.

Hon. Mr. Fulton: It is an administrative function. It is only a matter of whose signature. It is not the issuing of the licence; it is who signs it—

Mr. Pouliot: I am going to give you a little bit of homework.

Hon. Mr. Fulton: —and under the MVTA the registrar general—

Interjections.

Mr. Pouliot: One second here. You cannot have it eight ways.

Hon. Mr. Fulton: Mr. Pouliot—

Mr. Pouliot: My spies in your ministry have worked very hard.

Interjection: Oh, that answer should go with the green books.

Mr. Pouliot: One second here. Do I go with this? I have my own arguments because I knew I was not going to get the book.

Interjections.

Hon. Mr. Fulton: You come back on Monday and tell us who you believed in there.

Under the MVTA, the registrar general for Ontario is designated by the federal government as its agent under MVTA applications. It happens also to be the same person, the assistant deputy minister here. There is a question of whether they are signed by her on behalf of the minister or by the chairman of the OHTB.

Mr. Pouliot: How many applications in place under the present system will be affected by the court decision? What is going to happen to those applications that are presently in place?

Hon. Mr. Fulton: I do not have the numbers at my fingertips. Perhaps the registrar might be able to answer that for you.

Mr. Pouliot: Would you, at your earliest convenience, release the applications to me, minister?

Hon. Mr. Fulton: I do not see why not.

Mr. Chairman: You mean the number?

Hon. Mr. Fulton: The number or the papers?

Mr. Pouliot: The number of applications.

Hon. Mr. Fulton: The number? Sure.

Mr. Pouliot: I have no vested interest. I just want to know the number of people who could be affected.

Hon. Mr. Fulton: The X number; okay.

Ms. Kelch: Mr. Chairman, if I may, we have those numbers right here and I will read them into the record for the honourable member who is interested.

The number of total applications received to date under the MVTA—this is the federal statute the province is responsible for administering—is 2,210. The number of licences issued is 482. If you would like a further breakdown in terms of the status of the others, I can give you that as well. Is that what you wish, Mr. Pouliot?

Mr. Pouliot: Yes.

Mr. Morin-Strom: How many have been turned down?

Ms. Kelch: The number that has been turned down, remembering of course that there are two stages—by turned down, Mr. Morin-Strom, I understand you to mean those which have not made it through the fitness test. There have been 10 applicants so far that have been found to be unsatisfactory. The number of public interest test hearings that has been ordered is 30.

Mr. Morin-Strom: The balance are still in the system?

Ms. Kelch: Yes.

Mr. Pouliot: Can you tell me if Trans-provincial Freight Carriers is one of those rejected or a successful applicant?

Ms. Kelch: I would have to look. I do not have the breakdown in terms of the carriers. We can get that for you, though.

Mr. Pouliot: Okay, I am interested because you have used it as argument for the new legislation as it relates to the north. I am aware of the track record in the province of Nova Scotia and elsewhere regarding those people who are held in such high esteem in your presentation.

Since you will do that, I will ask you one question, why not give me the name of the whole—?

Ms. Kelch: The 2,210?

Mr. Pouliot: No, the name of the applications that will be impacted, that are frozen or could be affected with the recent legislation.

Ms. Kelch: That is the 2,210.

Mr. Pouliot: Okay. The paper industry is doing well in Canada. I would like to have the 2,210.

Hon. Mr. Fulton: You are going to sacrifice a lot of trees.

Mr. Chairman: Any other questions, Mr. Pouliot?

Mr. Pouliot: No, not for the time being. Thank you.

Mr. Chairman: Any other questions by members on the minister's presentation?

Mr. Morin-Strom: I would like to have some time to assess the presentation. I would like to reserve the opportunity to come back with responses to the minister's presentation.

My colleague to my right here is a lot quicker in assessing these things when compiling detailed arguments than I am. We have just received the information. It is a very important and critical issue. I do not think we should just bypass the minister's comments without having the opportunity to reflect on them and get some advice in terms of their relationship with—in particular I have heard from the Ontario Trucking Association that it takes a different view in terms of the impact of that court decision on Bill 87 and Bill 88, and in particular whether changes would have to be made to those bills, particularly to Bill 88, I believe.

I just do not want to leave us in a situation where you feel we have concluded this discussion. I think we should reserve the right to come back to this on Monday.

Mr. Chairman: I think you are primarily concerned with the potential impact of this on Bill 88 rather than on Bill 87. Am I right, or do you even know that? Is that what you are not sure of?

Mr. Morin-Strom: I do not know. If you want to go on to Bill 87, I would like to make a point on that as well.

Mr. McGuigan: Just a comment on the suggestion: certainly, we on this side have no objection to setting it aside while you get whatever opinions you are going to get. It is only normal.

Mr. Chairman: The request has been made to the committee that at another sitting we have a discussion on the impact of the court decision. Is there any problem with members doing that? All right. Do you want to set a day aside, a particular day to do that or do you want to leave it until the members feel they want to do it? Mr. Morin-Strom, it is your suggestion.

Mr. Morin-Strom: I believe we should do that before commencing clause-by-clause on Bill 88.

Mr. Chairman: Bill 88—but you are prepared to deal with Bill 87 first.

Mr. Morin-Strom: Yes, I am prepared to deal with Bill 87 first if you want to deal with Bill 87. I am going to suggest we do not do Bill 87 today.

Mr. Chairman: The suggestion has been made that we not deal with Bill 87 today, that we deal with Bill 87, presumably, on Monday and that when Bill 87 is finished, which I assume will not take very long, we move back to the discussion on this, the impact of the court decision. Is that correct, Mr. Morin-Strom? I do not want to put words in your mouth. Is that what you are suggesting?

Mr. Pouliot: No, that is not what he is suggesting.

Mr. Chairman: Oh, I thought it was.

Mr. Morin-Strom: Well, if you want to deal with Bill 87, I will put my argument on that if you want.

Mr. Chairman: I will not try and make assumptions on what you were saying, but it is agreed by the committee that it will not deal with the impact of the court decision today. That is agreed. Right? There is a consensus on that.

The next thing we must decide as a committee is whether we deal with Bill 87 starting today or put it aside and deal with it on Monday; that is, deal with Bill 87 first and when 87 is finished, then deal with the court decision. Is that correct?

Mr. Morin-Strom: I think we have to wait on Bill 87 until Monday for two reasons. One is that although I have not heard mention of the impact on Bill 87 from this, I cannot be 100 per cent sure there is none. I think we have to do that. Second, we have received a very detailed document here on bills 87 and 88. I do not know if there is stuff in here on Bill 87 or not. We have to have time to assess the impacts of this on both bills, most particularly Bill 87, before we start Bill 87.

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Mr. Chairman: All I am trying to get at, Mr. Morin-Strom, is what kind of agenda this committee wants for Monday. We must determine that.

Mr. Morin-Strom: Fine. I am quite prepared to suggest that we deal with comments on the minister's response and Bill 87 on Monday, and we wait until Wednesday for Bill 88.

Mr. Carrothers: For the benefit of the member, perhaps I could just clarify something for him. I believe his colleague the member for Lake Nipigon (Mr. Pouliot) has had a chance to read the decision. At least, he told me he had. The decision relates entirely to who has the authority to grant licences under the federal legislation. It has no impact whatsoever on either of the provincial bills that will be before this House. It is strictly a question of who is authorized to issue a licence under the federal MVTA.

Mr. Beer: In terms of any questions that anyone might have about the court decision, it would seem to me that if we are dealing with Bill 87 on Monday, Mr. Morin-Strom or anyone else, having looked at it, could certainly ask any question that might come up between now and then that relates to that

court decision, and that would be quite appropriate, or it may be that is going to come up through the piece.

I do not think we would have any objection to dealing with that as we go along, or at a specific point, because I think any member should be able to explore that court case and its relationship to the two bills we are doing. I just want to underline that. It may be that between now and the next time we deal with Bill 87, Mr. Morin-Strom or others may have some specific questions then, and I would hope he would feel free to put those at that time.

Mr. McGuigan: Certainly, I think it is a good suggestion that we leave the members opposite some time to pursue this and study it, and come back Monday morning. I think I would make a further observation to my colleague that we would like a little bit of specificity, to use Joe Clark's word, so that we have the appropriate people here, and I think especially the minister, because we do not want somebody saying at some later time: "You didn't have the highest authority here. You didn't have the proper people here." I think when we discuss that, we would like some reasonably accurate time set aside.

Mr. Wiseman: Just to ask a question, as you go over Bill 87, I mentioned the other day that I would perhaps be bringing in an amendment to have the OHTB do some of these functions. As I see it, Bill 87 deals with who carries on the work of Bill 88. Are we putting the cart before the horse by doing Bill 87—I know the minister probably will not accept that the OHTB look after this and maybe whip the fellows and gals across the way again. It really does change the whole thing and we may have to go back to Bill 87, as I see it; I am only a layperson. It lays out who carries out the duties in Bill 88. If we pass that and then the amendment I have is passed, then we have to go back and open up Bill 87 again, or could possibly do so.

Mr. Chairman: If I understand Mr. Wiseman correctly—I want the ministry's attention for this—he is concerned that if we deal with Bill 87 before Bill 88, we will regret it later and that we should consider, at least, dealing with Bill 88 first. Is there any problem with that in the minds of the hierarchy of the ministry?

Mr. Wiseman: Am I right in the assumption that I made there, because as I read it over, it seemed to deal with who administers this and one thing and another. If we put the amendment forth and if the government members saw fit to support that, as they have in Quebec and so on, and get around problems like the ones the Ontario Supreme Court seems to hang its hat on, then we would have to go back and open it up again.

Mr. Chairman: Certainly, the chair would have no trouble dealing with the one bill first. What does the ministry advise?

Interjection: There is no particular difficulty in reversing the order, so—

Mr. Chairman: Is that the wish of the committee, to reverse the order and deal with Bill 88 first? That means that you would have to be prepared for this amendment.

Mr. Wiseman: Well, is what I said right, basically?

Mr. Morin-Strom: Will we deal with it on Monday morning?

Mr. Chairman: That is the question. Are members of the opposition, in particular, prepared to deal with the amendments on Bill 88 that soon?

Mr. Morin-Strom: No, I am not prepared to. I think we have to have the time to assess this and come back and have the questioning of the comments the minister has made before we can prepare our final amendments to Bill 88. I would rather see us have a discussion of the court impact and Bill 87 on Monday, and then have time then to prepare our amendments for Wednesday. I would prefer to stay in that order.

Mr. Carrothers: I certainly would like to give the members opposite a chance to look at that decision. I presume by Monday they can do it. Once they have done it, they will notice it relates directly to the wording of a federal statute and who is to issue a licence under that.

I do not think we need an inquisition into whether that decision affects the two bills that are before us. We are going to be deciding ourselves the wording of this legislation. In that wording, we will make our own determination of who should issue licences under this legislation. The two simply do not connect. I certainly do not mind giving them until Monday to read the decision, since they obviously have not yet done so, but I think at that point we should put the issue to bed and get on with this legislation.

Mr. Morin-Strom: I do not believe the committee has been provided with a copy of the decision.

Mr. Carrothers: The Supreme Court office at 45 Queen Street West will provide you with one.

Mr. Morin-Strom: Fine. I am not a lawyer.

Mr. Pouliot: I think it is a legitimate request to ask that the ministry, the same people who have provided such useful information, go there at their earliest convenience and then present one for the committee.

Mr. Carrothers: You have a copy in your hand, Mr. Pouliot.

Mr. Chairman: Not surprisingly, I do not see a consensus. We must decide. On Monday, we must deal with the impact of the court decision. There are two ways of doing it. We can set aside Monday—Mr. Morin-Strom, you should listen to this—and deal only with the court decision, or we can deal with that and then move on to Bill 87. What is the wish of the committee?

Mr. Beer: We can deal with both.

Mr. Chairman: You must be fair to the members of the opposition who are responsible for moving amendments and so forth. What are the wishes of the two opposition critics in that regard?

We do have the actual court decision here.

Mr. Morin-Strom: I will go along with it.

Mr. Chairman: Mr. Wiseman?

Interjection.

Mr. Chairman: I think there is a consensus that on Monday we will

deal with the impact of the court decision in which members can have at the minister, as it were, and then we will move from that, if there is time, to discussion of Bill 87. If it becomes evident during the discussion, of course, that Bill 88 has to come first, then we would make a decision at that point. Failing that, we will deal with the impact of the court decision and Bill 87 on Monday afternoon, following question period. Are there any problems with that?

The actual court decision is here. If members want it tonight or tomorrow, we will make sure copies are made available to them. We can make them right away.

Hon. Mr. Fulton: With some trepidation, I would ask the chairman what he would like to do with this document.

Mr. Chairman: Do not ask while Hansard is recording. All right. See the clerk, Lynn Mellor, if you want a copy of that court decision today or tomorrow, and we will get it for you. All right, are there any other questions?

Mr. Beer: I think the only comment I would want to make, as I will be leaving this committee, is that I am always impressed at the interventions by the honourable member for Lake Nipigon. I never knew or understood until today the true meaning—you perhaps are aware of the French expression they use with lawyers—of maître. I feel my ability to recognize all these hidden abilities in the honourable member; he is also a maître.

Mr. Chairman: Almost any comment about the member for Lake Nipigon is in order.

Mr. Pouliot: I too will miss the workings of the committee. I am here as an impostor, really. I am not the critic. I am not a member of the committee, but my love for such a fine association as the International Brotherhood of Teamsters has had the effect that I wish to appear. I take a sincere interest, mainly on account of the fine people, brothers and sisters, who make up that fine organization. Basically, that is the reason I am here.

The committee adjourned at 5:49 p.m.

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STANDING COMMITTEE ON RESOURCES DEVELOPMENT

ONTARIO HIGHWAY TRANSPORT BOARD AMENDMENT ACT
TRUCK TRANSPORTATION ACT

Monday, October 31, 1988



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Morin-Strom, Karl E. (Sault Ste. Marie NDP) for Mrs. Grier

Clerk: Mellor, Lynn

Staff:

Richmond, Jerry M., Research Officer, Legislative Research Service
Yurkow, Russell, Legislative Counsel

Witnesses:

From the Ministry of Transportation:

Kelch, Margaret, Assistant Deputy Minister, Safety and Regulation
Fulton, Hon. Ed, Minister of Transportation (Scarborough East L)
Hobbs, David G., Deputy Minister

LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON RESOURCES DEVELOPMENT

Monday, October 31, 1988

The committee met at 3:37 p.m. in committee room 1.

ONTARIO HIGHWAY TRANSPORT BOARD AMENDMENT ACT
TRUCK TRANSPORTATION ACT
(continued)

Consideration of Bill 87, An Act to amend the Ontario Highway Transport Board Act, and Bill 88, An Act to regulate Truck Transportation.

Mr. Chairman: The standing committee on resources development will come to order.

Members will know, because of the agenda that has been distributed, today we are dealing with any responses members have to the ministry's response to the court decision of 10 days ago. If members wish to comply, Ms. Kelch wanted to say a few words about page 3 of that statement handed out by the ministry last week. That is the page with the charts on it. Is it in keeping with the members' wishes to hear from Ms. Kelch on that? Okay, Ms. Kelch, would you like to proceed.

Ms. Kelch: Just to be clear, so everybody understands what piece of paper I am dealing with, it is actually labelled C-20 in the package that was distributed to all the committee members, which is section C of your briefing book. It is the chart.

Before I begin, maybe I could just state in as clear a way as I can exactly what the three justices of the Divisional Court did decide about a week ago. First, that the Ontario Highway Transport Board is the provincial transport board as defined in the Motor Vehicle Transport Act, not the Minister of Transportation (Mr. Fulton). Second, if the minister were the provincial transport board, there would be no public interest test for part 2 MVTA licences in Ontario. That is because it is not the minister who has the authority to hold a public necessity and convenience hearing under Ontario law. Third, the guidelines issues by the minister for public interest tests are legally invalid. All of that is for the MVTA.

Specifically then on the chart, what I would like to do is follow through from 1 to 9 on the specific points that are on the chart.

1. The first is the application form printed and who in fact the application form is submitted to. We show that prior to the court ruling with respect to the MVTA, the ministry would receive the application form. After the court ruling, it shows that the board would receive that application form.

Let me state first and foremost that this is an administrative issue and there is no reason why a common application could not be used. The applicant could, for example, check off whether he was applying to the OHTB under the MVTA or the ministry under the Truck Transportation Act.

2. Second is the question of where the completed application and fee are submitted for processing. With the board's agreement, applications could, under the MVTA, be mailed to the OHTB care of the licensing office in the ministry. Again, it is an administrative issue; it does not substantially change as a result of the court decision.

3. This is an important point: the determination of the safety rating. The safety rating is the principal component of the fitness test. Its administration is consistent both between the MVTA and the TTA. That is, the registrar of motor vehicles for Ontario has been appointed the director under the MVTA and that individual has the responsibility to make the determination of the safety rating. It is the principal piece of the fitness test. That is done within the ministry—before the court ruling, in the MVTA; after the court ruling, in the ministry—and in the Truck Transportation Act it will also be carried out by the registrar of motor vehicles.

4. Who verifies the applicant is insurable? This is a clerical check. This is not the proof of insurance; this is the clerical check to in fact determine that the applicant is insurable. This would be done by the ministry staff, who could do the physical check of insurance. After the court ruling, for administrative purposes the board could do that again. Again, it is not necessarily an item that has to be done at the board; it could be done by the ministry.

As the deputy reminds me, it does not involve the board members. This is an administrative, clerical exercise.

6 and 7. Again, the second of the two fundamental pieces of the reform is the public interest test. Who decides to hold the hearing and who decides the result of the hearing has always been carried out by the Ontario Highway Transport Board, both for the MVTA and the Truck Transportation Act. The court ruling does not change any of that.

8. Second last, a final insurance check is required only when the applicant has undertaken to obtain insurance before the licence is granted; that is, has been found fit, subject to obtaining insurance. This physical check could be handled by either the ministry or the board staff. Again, it is an administrative function; it is bringing the two pieces together.

9. The licence is issued bearing the signature of an official, whether ministry or Ontario Highway Transport Board. Before the court ruling, the ministry has been issuing those licences since 1954. After the court ruling, it is the board member's signature that goes on the licence. The TTA would have the minister's signature on the licence.

In summary, let me point to the two important processes that are part of the regulatory system for both the Motor Vehicle Transport Act and the Truck Transportation Act, and those are: who decides the safety rating and how the public interest test process is managed. In both of those instances, the court ruling has no impact on the processes that are going to be in place.

Mr. Chairman: Are there any questions or comments by members of the committee on anything to do with the court decision and the ministry's response to it before we move to the bill itself?

Mr. Morin-Strom: Yes, I guess I would have a number of concerns about what the intention of the government is with respect to public interest hearings under the MVTA and, in particular, whether it is the intention of the government to eliminate totally all public interest hearings.

Hon. Mr. Fulton: Not at all. This does not apply to our legislation. It deals with the federal legislation. Ours is very clear. They are two separate issues.

Mr. Morin-Strom: But is it your intention to declare that you yourself, as the minister, are in fact the new highway transport board after the passage of the TTA?

Hon. Mr. Fulton: No. It is set out very clearly. As Ms. Kelch indicated, under the TTA, for the purposes of the public interest test, the board determines whether a hearing should be held; the government does not determine whether a hearing should be held. The purpose of the public interest test was to provide a safety net in terms of major impacts of new entrants, not to be sort of a second-tier hearing in every case.

What is built into the legislation, in terms of the provincial legislation and the federal legislation, is a public interest test which has been characterized as a safety net to be used in certain circumstances, not in all, to ensure there are not going to be undue or significant impacts. It is in both bills for five years. At the end of that time, there would be a determination of whether that public interest test should be continued on for a further period of time or whether it should be eliminated.

Mr. Morin-Strom: There seems to be some question, though, given the changes in the responsibilities between the registrar and the Ontario Highway Transport Board that the courts may rule in the future based on the Truck Transportation Act that the registrar is, in fact, the transport board.

Mr. Hobbs: I do not think there is any possibility of that whatsoever. It is very clearly set out. The problem with the Motor Vehicle Transportation Act was that it introduced the phrase "provincial transport board" without defining more precisely what the provincial transport board was. In the provincial Truck Transportation Act, there is no use of the words "provincial transport board." The responsibilities of the minister are set out very clearly. The responsibilities of the Ontario Highway Transport Board, which is spelled out, are set out very clearly. There is no possibility in our act for there being that concern about who does what. It is addressed very directly and very clearly.

Hon. Mr. Fulton: Before we proceed further, the member for Lake Nipigon (Mr. Pouliot) had asked for a listing of licence applications from 1988, this year only. We have the documents here, totalling something like 2,300 applications. There is the information that he sought.

Mr. Chairman: I am not sure we want to duplicate all those unless members indicate that they want copies of them. We will leave them with the clerk until members indicate otherwise.

Mr. Morin-Strom: We would like to have one.

Mr. Chairman: Are there any other comments or questions on the court decision? If not, as agreed to by the agenda, we will move on to Bill 87, An Act to amend the Ontario Highway Transport Board Act.

ONTARIO HIGHWAY TRANSPORT BOARD AMENDMENT ACT

Mr. Chairman: Are there any comments, questions or amendments on section 1?

Mr. Wiseman: I had one, but the clerk told me I was out of order on it.

Mr. Chairman: Right. I think the clerk is correct. Anything up to section 3?

Sections 1 to 3, inclusive, agreed to.

Section 4:

Mr. Chairman: On section 4, we have an amendment from the government. Who is going to move that amendment?

Mr. McGuigan: We are not making any amendment.

Mr. Chairman: You are not proceeding with the amendment?

Mr. McGuigan: No.

Mr. Chairman: All right. Any amendments or questions or comments on section 4 of the bill?

Mr. Wiseman: Could I just go back to section 2? On remuneration, would that start off the same as what the board is getting at the present time—the remuneration set by the Lieutenant Governor in Council? As a matter of interest, what is it at the present time that the board members get? Fifty-five thousand dollars per person?

Hon. Mr. Fulton: The chairman gets somewhat more than that. About \$55,000, I think, roughly, as approved by order in council.

Mr. Wiseman: It would not go up any more than that, would it?

Hon. Mr. Fulton: No more than your salary or mine might.

Mr. Wiseman: I do not know about that.

Hon. Mr. Fulton: Last year it was 3.9 per cent, as I recall.

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Mr. Hobbs: The chairman is paid about mid-range of the executive compensation plan in terms of the government, and the director is up to the deputy.

Mr. Miller: How many board members?

Hon. Mr. Fulton: Seven. The chairman, two vice-chairmen.

Mr. Miller: Seven plus the chairman?

Hon. Mr. Fulton: There are two vice-chairmen.

Mr. Wiseman: Just on that, what makes up a quorum? Do all seven sit or is it three and a chairman?

Hon. Mr. Fulton: No. On the board in the past, a quorum could have been one, but usually it is two or more.

Mr. Hobbs: In the past there have been single sitting members.

Hon. Mr. Fulton: In the old days, but now we have at least two.

Mr. Wiseman: And one of those would have to be the chairman or the vice-chairman?

Mr. Hobbs: Normally, yes.

Mr. Chairman: Is there anything else on section 4 of the bill?

Mr. Morin-Strom: I would like to ask why the government is not proceeding with amendments that it had listed in its presentation, page A-6, which presumably the government believed had some benefits. Why the change of heart?

Mr. McGuigan: It was a matter of wording. I understand that the government is now satisfied with the present wording.

Mr. Morin-Strom: I see the proposed amendment of section 16c would have improved the effectiveness and fairness of applying administrative penalties. That sounds like a fairly worthwhile objective.

Mr. Dietsch: Are you moving that?

Mr. Morin-Strom: No, I am asking why this is not an issue any more. I should say, I do not see the specific amendment. All I see is the explanation because the amendment was not included in our package, to my knowledge.

Mr. Hobbs: What page is it?

Mr. Morin-Strom: Page 6. I do not know specifically what the amendment was.

Mr. Chairman: I think Mr. Morin-Strom is asking for an explanation as to why, when an amendment has been indicated in the briefing book, it is not being proceeded with now. Is that right?

Mr. Morin-Strom: That is right.

Mr. Dietsch: I think that point was made perfectly clear, when all the debate was going on back and forth, that the briefing book was a culmination of things that were developed over a period of time and some would be adopted and some would not be adopted. Obviously, this is one of those that we do not feel we would like to move at this time.

Interjection.

Mr. Dietsch: If you feel it is a good motion, move it and we will debate it.

Mr. Morin-Strom: How can I move it if I do not know what it is?

Mr. Dietsch: There you go.

Mr. McGuigan: I suggest that we ask our counsel to come forward and explain this.

Mr. Hobbs: Is this at page A-6?

Mr. Morin-Strom: There is obviously a reference to an amendment, Ontario Highway Transport Board Amendment Act, Bill 87.

Mr. Carrothers: Is that not a reference to what the proposed change does? I think you are misreading the document in front of you, the section 16c, which is put in by section 4, improving the—

Mr. Morin-Strom: I am misinterpreting the meaning of this document, then.

Ms. Kelch: Do you remember the committee had asked, when we made these introductory comments, that we come back and show you which sections of the legislation we were referring to? That is what this whole package is.

Mr. Hobbs: That is what is in here.

Ms. Kelch: Yes. It is not an amendment; it is how the legislation actually shows.

Mr. Hobbs: And the right-hand column simply indicates why.

Mr. Chairman: Is there anything else on section 4? If not, shall section 4 as in the bill carry?

Section 4 agreed to.

Sections 5 to 10, inclusive, agreed to.

Title agreed to.

Bill ordered to be reported.

Mr. Chairman: Who says this committee gets bogged down in procedural hassles?

That completes Bill 87. It is hard to believe, but that means we have completed our work for the day. We did indicate to members that we would not be dealing with Bill 88 today. I do not think any of us anticipated we would be through this one so quickly.

Wednesday we shall be proceeding with Bill 88. Do we have the amendments in for those? We would appreciate those amendments on Bill 88 coming in to the clerk, because I am sure that Bill 88 will not go through quite as quickly as Bill 87 just did.

Mr. McGuinty: How come the opposition members of the committee got the background books today?

Mr. Chairman: I think they brought them with them. Any other comments before we adjourn?

Ms. Kelch: One final thing. For anyone who has misplaced his compendium for Bill 88 but would like another copy, Mr. Radbone, at the back of the room, has those.

Mr. Chairman: Thank you. If you would get your amendments in to the clerk either this afternoon or tomorrow, so that they can be distributed for Wednesday, we would appreciate it.

The committee adjourned at 3:59 p.m.

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STANDING COMMITTEE ON RESOURCES DEVELOPMENT

ONTARIO HIGHWAY TRANSPORT BOARD AMENDMENT ACT
TRUCK TRANSPORTATION ACT

WEDNESDAY, NOVEMBER 2, 1988



STANDING COMMITTEE ON RESOURCES DEVELOPMENT

CHAIRMAN: Laughren, Floyd (Nickel Belt NDP)

VICE-CHAIRMAN: Wildman, Bud (Algoma NDP)

Black, Kenneth H. (Muskoka-Georgian Bay L)

Brown, Michael A. (Algoma-Manitoulin L)

Dietsch, Michael M. (St. Catharines-Brock L)

Grier, Ruth A. (Etobicoke-Lakeshore NDP)

Leone, Laureano (Downsview L)

Marland, Margaret (Mississauga South PC)

McGuigan, James F. (Essex-Kent L)

Tatham, Charlie (Oxford L)

Wiseman, Douglas J. (Lanark-Renfrew PC)

Substitutions:

Carrothers, Douglas A. (Oakville South L) for Mr. Black

Grier, Ruth A. (Etobicoke-Lakeshore NDP) for Mr. Wildman

Haggerty, Ray (Niagara South L) for Mr. McGuigan

McGuinty, Dalton J. (Ottawa South L) for Mr. Leone

Ferraro, Rick E. (Guelph L) for Mr. Tatham

Morin-Strom, Karl E. (Sault Ste. Marie NDP) for Mrs. Grier

Clerk: Mellor, Lynn

Staff:

Drummond, Alison, Research Officer, Legislative Research Service

Yurkow, Russell, Legislative Counsel

Witnesses:

From the Ministry of Transportation:

Fulton, Hon. Ed, Minister of Transportation (Scarborough East L)

Hobbs, David G., Deputy Minister

Kelch, Margaret, Assistant Deputy Minister, Safety and Regulation

Radbone, Steve, Manager, Truck Transportation Office

McCombe, C. Jeffares, Director, Office of Legal Services

LEGISLATIVE ASSEMBLY OF ONTARIO
STANDING COMMITTEE ON RESOURCES DEVELOPMENT

Wednesday, November 2, 1988

The committee met at 3:39 p.m. in committee room 1.

TRUCK TRANSPORTATION ACT
(continued)

Consideration of Bill 88, An Act to regulate Truck Transportation.

Mr. Chairman: Come to order. Our agenda today is to proceed with the clause-by-clause consideration of Bill 88, An Act to regulate Truck Transportation.

There has been distributed to members a supplementary brief by the Canadian Transport Lawyers' Association to the standing committee on the proposed Truck Transportation Act and related legislation. They have made a presentation before and this is a supplement to that. I knew that members would not want us, I and the clerk, to get a copy of this without its being distributed to members as well.

We also have a package of the amendments, which to the best of the clerk's ability, which is considerable, is in the order that we will be dealing with them. Perhaps the only exception would be the very first one where it might be wise to move on to subsequent amendments in case there are changes in definitions to the first section. So if that is okay with members we will come back to subsection 1, which deals with the definition section of the bill. That is appropriate.

Mr. McGuinty: Was this brief from the lawyers' association presented to us previously?

Mr. Chairman: Not this one to my knowledge, no.

Mr. McGuinty: This is a supplement to the one they presented.

Mr. Chairman: This is a supplementary brief put in by them. We just got it today, I think, did we not, Lynn? Noon today. But as long as we are still considering the bill it would be silly not to receive them and distribute them to members.

Mr. Morin-Strom: Can we bring up a matter related to our discussions last meeting?

Mr. Chairman: Dealing with?

Mr. Morin-Strom: Supreme Court decision.

Mr. Chairman: It is an awkward request but we could have a short discussion on that if that is okay with members.

Mr. Carrothers: I am sorry I missed the request.

Mr. Chairman: Mr. Morin-Strom has asked if he could raise a matter.

I do not know to what extent.

Mr. Morin-Strom: It is going to be a short question.

Mr. Chairman: A short point on the court challenge question from those carried over from the other day. It is not on the agenda but unless members have a real objection I would suggest that we allow him to do that.

Mr. Carrothers: Certainly I have no objection as long it is as short as, say, 15 minutes.

Mr. Chairman: Probably less than that.

Mr. Morin-Strom: I heard earlier today that the minister had decided to appeal the decision. I would like to know if the minister can confirm that the decision has been made.

Hon. Mr. Fulton: Yes, I can confirm that the decision to appeal the decision of the Divisional Court has been made.

Mr. Morin-Strom: Perhaps we should be getting a statement from the minister as to the rationale for proceeding with that appeal.

Mr. Chairman: That is an interesting question and an interesting answer. I am sure the committee would like to know about the decision of the ministry to appeal that decision. It would be my guess.

Mr. Wiseman: If I could, because I think we were told that it was kind of a minor thing as far as our legislation is concerned, if it was really a minor thing why are we appealing it?

Mr. Hobbs: It is minor in terms of the people who are licensed under the Motor Vehicle Transport Act, as we have indicated. It has no impact whatever on the Truck Transportation Act but there is a lot of confusion among truckers, bankers, etc., as to the validity of the licences under the federal MVTA. Since it was a split decision and—this is purely in the federal domain—since the minister has been granting licences since 1954 and since there were two challenges previously in which his position was upheld, and since there may not be an opportunity to revise or change the federal legislation for some time, we feel it is in the interests of truckers generally to try to get some clarification by a higher court decision.

Mr. Wiseman: Could I just ask then, is it the almost 500 that have been issued since the first of the year we are worrying about or are we going back to 1954?

Mr. Hobbs: Some people have raised concerns about the going back to 1954. Frankly, we believe that if that is the case and there is this amount of confusion, and there was a split decision in terms of the Divisional Court, it is in the interests of truckers and whoever is involved with this to get a final and, hopefully, clear determination from a superior court.

Mr. Morin-Strom: To me, this action does not make any sense whatsoever, given the previous comments of the minister that this was a trivial matter, a matter of administration between whether his signature or the Ontario Highway Transport Board's signature was going to be on the licences.

In terms of this last point that was made, it makes even less sense when it comes to confusion. It seems to me it would have been much simpler to abide by the court decision and get on with reprocessing the licences, and that could have been done quite quickly. Now you have thrown the whole industry into turmoil as we wait who knows how long before we get the appeal proceeded with.

Can you tell us how long it is going to take to get this case finalized and get the licences re-established now, compared to what it would have been if you had abided by the decision and got on with the job of validating the licences according to the decision that has already been made? How long is this court case going to take?

Mr. Hobbs: No one can determine how long a court case is going to take, but if we do ask for a stay of the previous decisions, then we will simply proceed with the process that was already in place. We have also had discussions with the Ontario Highway Transport Board in terms of how we will deal with this on an interim basis and we are agreed that this can be dealt with on an interim basis in a very efficient manner. The question that is out there has to do with the validity of the licences in a number of people's minds, and since that is there, we believe it should be clarified.

Mr. Morin-Strom: Have you not heard from the industry, though, that in fact an appeal on this will result in greater confusion, greater uncertainty and greater difficulty in the investment in terms of industry being able to make investments not knowing what the results of this further court case is going to be?

Mr. Hobbs: No. We frankly believe this will lead to a clearer situation than is currently the case. It is a question of law. We are going to be proceeding and they are going to be carrying out their trucking enterprises, but as long as there is that question out there, we believe that the higher court should deal with it.

Mr. Wiseman: Not being a lawyer, I wonder: If we appeal this now, until it is finalized, does that make the licences that are out there credible for the banks and for the truckers who invested an awful lot of money? They are operating now, but when it is in the appeal stage, can they still go on and operate and be within the law as long as the appeal is before the courts?

Mr. Hobbs: We think there are two different ways of doing that.

I guess I would just like to raise the point, Mr. Wiseman, that the challenge was brought by the Ontario Trucking Association. We indicated to them when they initially talked about bringing the challenge that this could well be the result. What we are trying to do now is to get some clarification into the situation legally.

In terms of the ongoing operations of the trucking enterprises, we still indicate, as we have in the last couple of sessions, that trucking firms will be operating on a normal basis. This is trying to clarify a legal point. It does not have anything to do with the normal operations and we will ensure, through dealing with the OHTB, that processes will be in place whereby they will continue on an interim basis to operate the way they have been.

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Mr. Wiseman: I am being a layman again; I am not a lawyer. I

understood if you appealed the decision, then everything stayed the way it was until that appeal was heard; in other words, they would be legally operating under the licence they are on. I am not sure whether that is the case. We have one lawyer across the floor.

Mr. Hobbs: Yes. That is basically what we are telling our enforcement people, that things are going to be the same. From our point of view, they will carry out their enterprises.

Mr. Wiseman: Would that satisfy the banks, too?

Mr. Hobbs: If we do not appeal, there is still going to be this cloud that hangs over it. It is the concern of the banks and others with respect to the legal issue which is the reason for trying to get this clarified.

Mr. Wiseman: When the Ontario transport board took it before the courts, how long was it before it was actually heard?

Mr. Hobbs: About three months.

Mr. Chairman: The committee felt—I hope members understand that I am speaking for all members now, not just opposition members—that when something like this happens, there is no standing order that requires the ministry to come in and tell the members of the committee anything. It would be more helpful, when something like this happens, just as it did with the original court decision, to have a response.

Today it would have been more helpful if the ministry had come in with an announcement that the court challenge is being appealed and why it was and what the impact of that would be. It makes for smoother running of the committee. I am thinking ahead now to estimates debates as well, not just this bill. I think that is in consideration of all members of the committee, not simply opposition members.

Mr. Morin-Strom: One of the big issues here is the cases which were approved by ministry, licences issued this year, where there were challenges and requests for public interest tests were denied. My understanding is that out of the 500-plus cases, there were challenges to those—

Mr. Hobbs: Every single one.

Mr. Morin-Strom: Not in my understanding.

Ms. Kelch: There were not public interest test hearings on every one.

Mr. Morin-Strom: How many were there?

Ms. Kelch: There were 38. Is that right, Steve?

Mr. Radbone: Around that.

Ms. Kelch: In the high 30s. But if you are asking us whether those 38 were turned down, the answer is no.

Mr. Hobbs: They have yet to be heard. There have been only one or two where there have actually been hearings.

The intent of the public interest test was not to have a situation where

every single application underwent the scrutiny of a public interest test. It was intended to be a safety net which would come into play when it was felt there was going to be significant market impact. The Ontario Trucking Association has chosen to go the route of challenging every single application that comes forward. That has not been the case in any other province in Canada where the Motor Vehicle Transport Act is in place. Having the board order 30 hearings or so probably is reasonable given the public interest test was considered to be something which would kick in over and beyond the fitness test, as a safety net provision.

Mr. Morin-Strom: According to the court decision, the Ontario Highway Transport Board should have had the right to determine if there were public interest tests required or not.

Ms. Kelch: But they did under the existing system, as well.

Mr. Hobbs: The Ontario Highway Transport Board was responsible for ordering whether there would be a public interest test under the MVTA, and it has that power under the Truck Transportation Act, which we are considering now.

Ms. Kelch: The court decision does not change that. It does not have any impact on who determines public interest.

Mr. Morin-Strom: How about on the external application?

Mr. Hobbs: That is the Ontario Highway Transport Board. It has been its responsibility and continues to be its responsibility, in terms of extraprovincial. It is its responsibility under the Truck Transportation Act. If you take a look at that chart we handed out, that has not changed in terms of the basic process.

Mr. Morin-Strom: Mr. Chairman, at some point are we going to go into the definitions first? You said something about not wanting to do the definitions first.

Mr. Chairman: I was suggesting that we skip the definitions and then move back to them because of other possible changes during the bill. I have no objections to doing the first section, if that is what the committee wants. It is not a matter of great import.

Mr. Morin-Strom: I would prefer to do the first section.

Mr. Chairman: Start at the beginning? All right. I do not see any problem with that. All right. Can we proceed with Bill 88 then, clause by clause?

Mr. Chairman: We have an amendment for subsection 1(1), a government motion, and that is by Mr. Carrothers.

Mr. Morin-Strom: Can we deal with one of the definitions prior to that one?

Mr. Chairman: Is it in Bill 88?

Mr. Morin-Strom: Yes. Under subsection 1(1), I would like to talk in regard to one of the definitions prior to their amendment.

Mr. Chairman: Okay. I think what Mr. Carrothers is moving is the one over on page 4. Am I correct?

Mr. Carrothers: On "STCC."

Mr. Chairman: So if it is prior to "STCC," you could raise it, yes.

Section 1:

Mr. Morin-Strom: I would like to get clarification on the word "board" in this bill. It says, "In this act, 'board' means the Ontario Highway Transport Board," and throughout the bill "board" is referred to a number of cases. The definition of board, of course, is absolutely critical to the way Bill 88 works in conjunction with the federal legislation under the Motor Vehicle Transport Act. They do not identify definitions through the various provincial bills, but their bill talks about the "provincial transport board." Will the minister confirm to us that for the purpose of the application of the federal bill in the province of Ontario "provincial transport board" does have exactly the same meaning as what is connoted here—"board" means the Ontario Highway Transport Board"?

Hon. Mr. Fulton: I understand that is what the court case is all about.

Mr. Morin-Strom: What I want to know is, is the provincial transport board the Ontario Highway Transport Board or is it the registrar or the minister? That is the issue.

Mr. Hobbs: Under the Truck Transportation Act, it is very clear that the board is the Ontario Highway Transport Board. That was the problem with the wording of the federal legislation. In the Truck Transportation Act, it is very specific. The MVTA, in terms of what has been past practice, left it open to question. That was the basis of the challenge.

Mr. Morin-Strom: Yes, and I want to know whether the minister agrees that the meaning of "board" in this bill is the same thing as what the federal government is referring to in its bill, that the board or Ontario Highway Transport Board as it has been identified here in fact is the provincial transport board for the purpose of the MVTA.

Hon. Mr. Fulton: I am advised that is exactly what the court case is all about.

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Mr. Morin-Strom: That is why we have to have clarification on this bill. We cannot leave this bill undetermined as to what is the provincial transport board in Ontario.

Mr. Hobbs: The words "provincial transport board," with respect to the provincial legislation, are not used. We have spelled it out very explicitly that "board" is the Ontario Highway Transport Board.

Mr. Morin-Strom: I am asking you what, in your view, is the provincial transport board in Ontario?

Mr. Hobbs: We do not use that term in terms of the provincial legislation.

Mr. Morin-Strom: You are the ones who have to apply the Motor Vehicle Transport Act in Ontario. The rules for applying the MVTA are largely determined by what we put into this Bill 88.

Mr. Hobbs: No, they have absolutely no relationship.

Mr. Morin-Strom: Will you answer my question? What is the provincial transport board in Ontario for the purpose of the MVTA?

Mr. Hobbs: The board's express purpose is defined very clearly. Frankly, I do not understand the—

Mr. Wiseman: Can I ask it another way? Can we take it that every place we see "board" in the bill, it is the Ontario Highway Transport Board we are talking about, and not the registrar or the minister?

Mr. Hobbs: Yes.

Interjection: There is this continual confusion between this bill and the MVTA.

Mr. Carrothers: On a point of order, Mr. Chairman: I thought the purpose of the discussion now was to deal with the definitions in section 1 of Bill 88. I can understand there is confusion around the Motor Vehicle Transport Act, but it is now the subject of court action. I am wondering if it is in order to discuss the definition of the federal legislation when we are supposedly dealing with what we are defining to be the terms used in the provincial Bill 88.

Mr. Wiseman: It says "board" so many times in here.

Mr. Chairman: Mr. Carrothers has raised a point. I think, though, with "board" being right in the very first sentence of the bill, Mr. Morin-Strom is entitled to try to get a clarification as to how the ministry views the Ontario Highway Transport Board. I think most members have worked on bills before and they understand that we are not just here to deal with amendments to the bill; We are here to deal with clause-by-clause, whether there is an amendment to them or not. So it is appropriate to raise matters such as this.

Mr. Hobbs: In response to Mr. Wiseman's question, the answer is yes. Subsection 1(1) says, "'Board' means the Ontario Highway Transport Board." The federal legislation, because of the wording it used, left some question whether it was the minister or the board.

Mr. Chairman: Can we have a word from legislative counsel.

Mr. Yurkow: The purpose of putting "board" in the definition is to preclude having to set out in the body of the act "Ontario Highway Transport Board" each time. It is just a space-saving device. It has no bearing on federal legislation.

There is nothing we could do in this act that would affect the definition of "provincial transport board" under the federal legislation. In response to Mr. Wiseman's point, yes, every time you see "board" in the act, you should read "Ontario Highway Transport Board." That is the only reason the definition is in there.

Mr. Wiseman: Could I just ask for one more clarification on that. Once this legislation is passed—we are told it is the Ontario Highway Transport Board there every time it says "board." There is no way the minister could assume that responsibility after the bill is passed without bringing it back and amending the bill in the House.

Mr. Hobbs: That is right.

Mr. Morin-Strom: However, I assume it does not stop the minister from contending that in fact the Ontario Highway Transport Board is not the provincial transport board and that he is the provincial transport board.

Mr. Hobbs: It very definitely does preclude him. The functions are spelled out very specifically in this act. Again, I come back to the problem with the federal act, which was the wording that left it unclear.

As the legislative counsel has indicated, we have tried to make it very explicit that the Ontario Highway Transport Board under this act is the Ontario Highway Transport Board. The minister's and the registrar's responsibilities are similarly defined very clearly. We had a problem with the federal legislation when it first came forward in draft form. We told them that. They, obviously, for their own reasons, decided to proceed the way they did.

Mr. Morin-Strom: You have just confirmed that the provincial transport board in Ontario is the Ontario Highway Transport Board.

Mr. Hobbs: No, we are not talking about the—

Mr. Morin-Strom: Okay. I am pleased to hear that, because previously you have been contending in your court cases that the provincial transport board in fact is the minister.

Mr. Hobbs: In the federal legislation, because of the way the thing is set out with respect to who eventually authorizes; we do not use the legal term "provincial transport board." We are very specific. We say the "Ontario Highway Transport Board."

Mr. Morin-Strom: I think that, as legislators, we should be the ones taking the decision whether we have a provincial transport board and what it is and we should be explicitly stating that the provincial transport board is the Ontario Highway Transport Board in Ontario.

Mr. Hobbs: We do not have to, because the federal legislation had to deal with it in the context of its being implemented in a province. This says that the board is the Ontario Highway Transport Board. We do not delegate what we are doing to other provinces. This is very explicit.

Mr. Morin-Strom: My understanding is that following the enactment of the Motor Vehicle Transport Act, the provincial Minister of Transportation took the position that he, and not the OHTB, is the provincial transport board within the meaning of the MVTA. He has been pressing that argument in proceedings before the courts, but the effect of that argument, if successful on your appeal now again, would be to eliminate any public interest test for extraprovincial truck transport in Ontario.

Mr. Hobbs: Absolutely not.

Mr. Chairman: Perhaps I could ask a question. If the appeal is successful, would it alter anything vis-à-vis the minister versus the board?

Mr. Hobbs: It would make the MVTA more consistent with the Truck Transportation Act in terms of how the basic functions are set out.

Mr. Morin-Strom: You are going to have to tell me what is wrong with this argument. This is the reason that was told to our committee in testimony before us by the Canadian Transport Lawyers' Association in its presentation back in August 1988. They said the effect of your argument, which you are currently fighting, if successful, will be to eliminate any public interest tests for extraprovincial truck transport in Ontario.

Interjection.

Mr. Morin-Strom: I am going to give you the reason, and you just tell me what is wrong with the reason.

"The reason for that is that subsection 8(3) of MVTA makes the authority of the provincial transport board"—that is the federal wording—"to embark on a public interest determination conditional on the authority of the provincial transport board under the law of a province to hold a public hearing with respect to an application for a licence to operate a local truck undertaking. Since, under the PCV Act, the minister has no authority to hold a public hearing, it follows that the minister cannot embark on a public interest determination under MVTA. That somewhat surprising result is not changed by TTA. Because TTA reduces the powers of the OHTB and arguably enhances the position of the minister as the 'provincial transport board', TTA if anything solidifies the minister's argument."

Mr. Hobbs: We do not agree with that. The minister is the minister for the purpose of issuing a licence. The public interest test is triggered at the discretion and on the basis of the Ontario Highway Transport Board's decision. The minister has nothing to do with it. After they have made their determination, then the minister comes into play in terms of whether the licence is issued or not.

Mr. Morin-Strom: So you disagree that the authority of the provincial transport board to embark on the public interest determination is conditional upon it actually having that authority.

Mr. Hobbs: We believe it has that authority. We believe that is the authority on which it has been determining whether a public interest test should be considered or not since the MVTA kicked in.

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Mr. Morin-Strom: So you are saying that Bill 88 will give the minister the authority to hold public interest tests.

Mr. Hobbs: No.

Mr. Morin-Strom: You just said your case was premised on the minister being defined as a "provincial transport board," not the OHTB, which means—

Mr. Hobbs: For the purpose of issuing the licence. We are going to continue with the OHTB being the body that determines whether or not there is

a public interest test.

Mr. Morin-Strom: So you are saying that the term "provincial transport board" in the federal bill refers to two different things in Ontario. For some things it refers to the minister and for other things it refers to the Ontario Highway Transport Board.

Mr. Hobbs: Yes.

Mr. Morin-Strom: You expect a court to recognize that we have two transport boards in Ontario?

Mr. Hobbs: There was some consideration that that would be an outcome. In terms of the basic structure and the basic process, as we have indicated before, there is no change. This has to do with, under the law, who signs what? The minister is not personally going to get involved, nor is the registrar, in public interest tests.

Mr. Morin-Strom: You do not have the authority to.

Mr. Hobbs: Exactly.

Mr. Morin-Strom: Which would mean, under an undoubted court challenge on this thing, that the result, if you win your case and the minister gets declared the "provincial transport board," is that there will be no public interest tests.

Mr. Hobbs: Not at all; there will be.

Mr. Morin-Strom: There will not be if the minister is not given the authority in this bill to hold them.

Ms. Kelch: But there is one clarification which is possible. The important thing to keep in mind here is that there were two opposite arguments put forward. You are quite right that the Ontario Trucking Association did argue that there would be no public interest tests. The representatives for the government argued the opposite. If in fact the conclusion after the clarification and the appeal has been heard is that there is none, there is the possibility for the MVTA to be amended to make it clear. I would argue that the federal government would be very interested in ensuring that there is that transition period in Ontario for holders of MVTA licences.

Mr. Hobbs: The commitment has been to have a public interest test under the MVTA and under the Truck Transportation Act for five years, after which time there will be a review. The federal government initially did not want to have any public interest test. In terms of coming to a deal with the provinces, we finally persuaded them to go to five years so that there would be a safety net. The intention is to have a public interest test in place for the period of time that was agreed to, and there will be public interest tests carried out during that period of time, the legalities of wording and what have you notwithstanding.

Mr. Morin-Strom: Okay. Getting back to the presentation from the Canadian Transport Lawyers' Association. They go on, farther down at the bottom of page 8, to say:

"CTLA suggests that the critical issue to be resolved is whether the Legislature"—not the minister; whether we, as legislators—"wants there to be

a meaningful public interest test even for an interim period. It would appear from the position taken by the minister that he does not want there to be a public interest test for extraprovincial trucking. CTLA suggests that if the Legislature does not want there to be a meaningful public interest test, then it should so state by eliminating the public interest test in TTA and leaving the powers of OHTB as found in TTA unmodified so as to effectively permit the minister to succeed in the argument advanced before the Divisional Court. If, on the other hand, it is the intention of the Legislature that there be a meaningful public interest test, both with respect to extraprovincial and intraprovincial trucking operations, then CTLA suggests that the following changes be made in TTA."

Most critical on the point we are talking about right now, they are saying, "TTA should be amended to make it clear that the OHTB, and not the minister or the registrar, is the 'provincial transport board' for the purposes of the MVTA."

Why will the minister not do that in this bill, particularly in this section under the definition of the Ontario Highway Transport Board?

Hon. Mr. Fulton: It does not work for the member to suggest that I, personally, do not want a public interest test. I am the guy who went to Ottawa to try and persuade the former Minister of Transport, Mr. Mazankowski, to in fact implement it. At that point, he was talking of one year. We were looking for a longer period. His successor, Mr. Crosbie, finally came to terms with our proposal and in fact agreed on five years. I do not know where he gets this idea that we do not want it.

Mr. Hobbs: In addition, the provincial transport board is required to be used in federal legislation because it is dealing with provinces; we are not. We spelled out very clearly that "board" means the Ontario Highway Transport Board.

Mr. Morin-Strom: You are saying these lawyers do not know what they are talking about, lawyers who have spent their careers on transport business.

Mr. Hobbs: No, I am not saying that at all.

Mr. Morin-Strom: They are suggesting that we should define what the provincial transport board is in Ontario?

Mr. Hobbs: Lawyers quite often disagree with one another.

Mr. Morin-Strom: You would rather leave it indeterminate and leave it up to court decision as to who is the transport board and who is not?

Mr. Hobbs: It is very determined.

Mr. Chairman: Is there anything else on the definition, Mr. Morin-Strom?

Mr. Morin-Strom: Given the fact that the minister will not agree that the "provincial transport board" in the province means the same thing as this definition of "board" or "Ontario Highway Transport Board," would it be possible to change the wording?

Mr. Chairman: If you do it in the form of an amendment.

Mr. Morin-Strom: Can I move an amendment?

Mr. Chairman: You may move an amendment.

Mr. Morin-Strom moves that the definition of "board" be changed to read: "'Board' means the provincial transport board which is the Ontario Highway Transport Board."

Mr. Haggerty: You are adding the word "provincial." Nobody understands Ontario.

Mr. Chairman: Order, Mr Haggerty. The motion is in order as I read it. I am sorry, Mr. Morin-Strom. Did you want to speak to your motion or have you done that adequately?

Mr. Morin-Strom: I think we should have clarification because this bill impacts not only on intraprovincial licensing, but also on the process for extraprovincial licensing, in particular, application of the federal Motor Vehicle Transport Act. We should clarify that to us, the Ontario Highway Transport Board is the provincial transport board for Ontario.

Mr. Carrothers: With all good intentions, Mr. Morin-Strom has moved an amendment that he thinks will clarify things, but that I think will further complicate things. I question whether this amendment is even in order since what we are attempting to do, if this amendment goes through, in the interpretative section of a provincial bill is to amend the interpretative section of a federal bill. I certainly think it may be out of order. Perhaps I will not push that point. I think it is creating further confusion, Mr. Morin-Strom. I think you are defeating the purpose you are trying to achieve by moving this amendment. I would certainly not support it.

Mr. Chairman: Mr. Carrothers, if I might, as the provincial bill reads now, "'Board' means the Ontario Highway Transport Board." What Mr. Morin-Strom is saying simply—it is not complicated—is that "board" means the provincial highway transport board which is the OHTB.

Mr. Morin-Strom: The provincial transport board.

Mr. Chairman: There is no reference to any other jurisdiction.

Mr. McGuinty: I am not sure if I can vote for or against it because I do not understand it. My less-than-subtle mind really cannot see the significance of the qualification Mr. Morin-Strom adds. He has elaborated, but I still do not understand the significance of it.

Mr. Chairman: Would a word from our legislative counsel be appropriate?

Mr. Yurkow: The proposed amendment would be trying to define a term that is used in federal legislation. "Board" in this case is defined for the purposes of this act only. There is nothing you are going to do in this act which is going to resolve the problem of what a provincial board is.

Mr. Chairman: The intent of the amendment is one thing. Whether or not it is an order within the bill is quite another matter. I would suggest to you that it is in order. Whether or not it accomplishes what Mr. Morin-Strom wants is another point.

Mr. Carrothers: I was not going to press that point of order.

Mr. Haggerty: Just on that point, I think if we look at the bill, it says "Bill 88, An Act to regulate Truck Transportation," and goes on to the contents. Here is the key to it, "Her Majesty, by and with the advice and consent of the Legislative Assembly of the province of Ontario, enacts as follows." It is there.

Mr. Chairman: I am not questioning that. I understand what you are saying, but in terms of whether you agree with an amendment or not, if it is in order it should be allowed to be put. I am saying to you that I believe that amendment is in order, because it simply changes the wording in an existing section of the bill.

Mr. Morin-Strom, do you wish to read it again?

Mr. Morin-Strom: "'Board' means the provincial transport board which is the Ontario Highway Transport Board." The only words with capitals are the last four and that first word "Board" in quotes.

Mr. Chairman: Is that proposed amendment clear?

Mr. Morin-Strom: I would like 20 minutes to get our members.

Mr. Chairman: Okay. There has been a call for a 20-minute recess while members are called to vote. We will recess until twenty minutes to five.

The committee recessed at 4:22 p.m.

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Mr. Chairman: The recess has ended. I think that members have all heard the motion put by Mr. Morin-Strom. Does anyone want the motion read? I think we have it in writing now and the clerk will give it to us.

Mr. Morin-Strom moves that the definition of "board" be changed to read: "'Board' means the provincial transport board which is the Ontario Highway Transport Board."

Motion negatived.

Mr. Chairman: Are there any comments, questions or amendments between the clause we just finished up to page 4 of the bill, the section that begins with "'STCC' means the Standard Transportation Commodity Code." Is there anything between the section just finished and that section on page 4? Is that going too quickly?

Mr. Carrothers: I do not think so.

Mr. Chairman: I know you do not.

Is that all right, Mr. Morin-Strom, Mr. Wiseman? Shall everything up to the end of the long paragraph at the top of page 4 in the bill carry? Carried.

We now have an amendment put by Mr. Carrothers which deals with STCC.

Mr. Carrothers moves that the definition of "STCC" in subsection 1(1) of the bill be struck out and the following substituted therefor:

"'STCC' means the Standard Transportation Commodity Code Tariff 6001-0, as amended effective the 1st day of July, 1987, filed with the National Transportation Agency."

Mr. Carrothers: I believe that the purpose of this amendment is just to—actually it is on page D-1 for those who have their book. Perhaps they would just care to read it.

Mr. Chairman: I see that Mr. Carrothers is going to move us right along.

Mr. Wiseman: He read that like a lawyer.

Mr. Carrothers: Sorry, Mr. Wiseman. It is a bad habit of mine.

Mr. Chairman: Are there any comments or debate on the amendment moved by Mr. Carrothers? All those in favour of Mr. Carrothers's amendment? I see one or two opposed.

Motion agreed to.

Mr. Chairman: Is there anything in the balance of section 1, which is in the middle of page 4?

Section 1, as amended, agreed to.

Section 2 agreed to.

Section 3:

Mr. Chairman: Mr. Carrothers moves that subsection 3(1) of the bill be amended by striking out the words "on or after the 1st day of January, 1988" in the first and second lines.

Mr. Carrothers: It was a drafting oversight, one of the dangers, I suppose, of word processors where things get left in when they should be taken out on redrafting. Since that date is passed, it seems inappropriate to leave it in.

Motion agreed to.

Mr. Chairman: Are there any other amendments up to subsection 3(8)? Shall subsections 3(2) to 3(7), inclusive, carry? Carried.

That takes us to subsection 3(8), where Mr. Morin-Strom has an amendment.

Mr. Morin-Strom: I move that subsection 3(8) be deleted which means, I take it from the clerk, that I vote against it.

Mr. Chairman: Yes, rather than delete, you just simply indicate you wish to vote against the subsection. Did you wish to speak to subsection 3(8), Mr. Morin-Strom?

Mr. Morin-Strom: Yes, we had received submissions on this section and, in particular, I refer to the detailed submission of the Canadian Transport Lawyers' Association, on page 11 of which they talk about the licensing of intermediaries.

They say: "Subsection 3(8) of the Truck Transportation Act contemplates the licensing of what it terms 'intermediaries.' The definition of the term 'intermediaries' refers to another term, 'freight forwarder,' which is not defined. It is suggested that this makes it very difficult to know who is covered by the concept of intermediary and who is not. In addition, the concept of a 'prearranged fixed fee,'"—which is also in this section—"is so elastic as to allow virtually any person to escape the regulation contemplated by this subsection. It is suggested that, in the absence of a more precise definition, the requirement contained in subsection 3(8) should be dropped in its entirety."

I would ask the minister why he has not responded to this concern about the wording of this bill, why has not clarified, by a government amendment, what "intermediary" and "freight forwarder" mean and why he has left such a big loophole, in terms of the wording of "prearranged fixed fee" and not acted on the recommendation we received before our committee.

Hon. Mr. Fulton: I do not agree with some of the terminology of the member, in terms of loopholes and some of his other definitions, and so on.

Mr. Morin-Strom: In terms of what loopholes?

Hon. Mr. Fulton: We heard from the freight forwarders and others related in the industry and we are acting at their request, not the lawyers' request, in this instance, and in fact, it is something they wanted and they put forward some thoughtful arguments and we agreed, after consideration. It was not originally intended, but after extensive consultation with them and others, we agreed to it.

The Ontario Trucking Association, as a matter of interest, also supports it. We are not necessarily here supporting everything the lawyers want in this legislation. I should point that out.

Mr. Morin-Strom: I am trying to get a clarification from you as to what a freight forwarder is, for example.

Ms. Kelch: We have had some significant discussion and debate on this issue and we had a small group of individuals which included transportation lawyers, in an attempt to best define this term, and this is the best aggregate definition that we can come up with.

Mr. Morin-Strom: You do not even have a definition. What do you mean? What is your definition of a freight forwarder?

Ms. Kelch: That is a good question.

Mr. Chairman: Mr. Morin-Strom, you are awaiting an answer, are you?

Mr. Morin-Strom: Yes, I was hoping we would get a clarification for the record since it is not defined in the bill as to what a freight forwarder is.

Ms. Kelch: There have been traditional ways of describing this particular group of the industry and we do believe that it is an individual who holds an operating licence, who transports or does operative transport, or provides transportation or offers to provide transportation on a highway for compensation.

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Mr. Morin-Strom: It sounds pretty broad.

Ms. Kelch: As I indicate, there is much debate in the industry in terms of how we can be very explicit in this area. It is difficult but, as the minister has indicated, it is an area the industry wants us to include, even though it is difficult to be very precise in terms of who this group is.

Mr. Morin-Strom: You said you had a meeting of various shippers and truckers and yourselves. I do not believe that occurred here. Could you tell us who was involved and who agreed to this definition?

Ms. Kelch: I do not have the list of people. Perhaps we could ask Mr. Radbone to come to the microphone as he was the individual who chaired the meeting and he could tell us who was there.

Mr. Radbone: It was a group of various types of intermediaries. It included the OTA, it included people who operate as forwarders, people who refer to themselves as load brokers, people who refer to themselves by a variety of terms: transportation agents. There are many shades of intermediary. This is somebody who arranges transportation either by a for-hire carrier or by some other means, who is not the carrier himself and is not the shipper. He is an intermediary between those two sets. There is every possible conceivable shade of intermediary that exists out there in the marketplace today. This is why it is almost impossible to come up with an all-embracing definition.

Freight forwarders were specifically mentioned in the legislation because that is one of the largest groups and one of the most commonly understood types of groups of intermediary which is out there at the present time. That is put in there as a "for instance" because people understand generally what a freight forwarder does. What a freight forwarder does do is consolidate freight of many shippers in his terminal and then transport it by a licensed carrier, not in his own truck, to another terminal where it is broken up. He does not actually transport the goods. There are all kinds of shades of intermediaries between freight forwarders to people who are virtually truckers.

Mr. Morin-Strom: So this provides a green light to carry goods for all of these intermediaries without a licence.

Mr. Radbone: No. What this section says is that if you are in the business of arranging for transportation and you are not purely an agent of the shipper but are a principal in the transaction, then you should be licensed as a carrier.

Mr. Chairman: Mr. Morin-Strom, would you allow a supplementary?

Mr. Ferraro: I really was not going to say a heck of a lot, being a substitute for a substitute, but I would like some clarification from the appropriate source, whether it is the minister or legislative counsel. Is it intentionally implied that there is no specified definition in the bill for freight forwarder? If that is the case, could you elucidate on that? If not, why would you not want a definition of freight forwarder? Mr. Morin-Strom's question deserves perhaps a little more explanation and I would like a little more explanation. Do you need a definition of "freight forwarder" put in the bill? If not, why not?

Hon. Mr. Fulton: I guess we are trying to address those people who effect putting trucks and goods on the highways. A whole host of operations take place and some folks participate at any number of those levels up to, I suppose, even owning your own trucks. Perhaps some do not, but there is a substantial number of definitions.

Mr. Ferraro: I understand the dilemma surrounding definitions, but if there is no definition, is there not a bigger dilemma from a legal standpoint?

Hon. Mr. Fulton: I cannot offer you a legal answer.

Mr. Haggerty: I want to follow up on the question raised by the member looking at the words "freight forwarder" and looking at "customs brokerage." I come from an area that has a number of customs brokers at the Peace Bridge in Fort Erie, one of the largest points of entry into Canada. If I look at the term "freight forwarder," he acts something like a broker; he hires independent truckers or even larger trucking firms to carry the materials or the goods to whatever destination is required.

I think someplace along the line you should have a definition in the act. My concern is the matter of free trade, when it enters the area of deregulation of the trucking industry across the two countries. The city of Buffalo, in fact, is proposing to construct a 20-acre truck stop on the American side. One of the reasons they want to move in that direction is to reduce the delay in the traffic flow of vehicles across the Peace Bridge. They thought they could do it all in one centre on the American side. This is what they are looking at, speeding up the flow of traffic on the bridge.

You should have a definition in this bill to say what a freight forwarder is. You say it is operating within Ontario. They may have to go beyond that. All I am trying to suggest is that you should have something there to protect the industry in Ontario because you are looking at boundaries beyond Ontario.

I could see in the town of Fort Erie that we lost the trucking industry there, we lost the railroad yards in Fort Erie and perhaps we could lose the brokerage business in Fort Erie if this locates in Buffalo. Their suggestion is do it all by computer, with direct contact to Ottawa, to the federal government, the agencies over there dealing with different forms of taxes and goods coming into Canada. I would look at this very closely.

Hon. Mr. Fulton: I am not sure what the question was, but it is an interesting point of view.

Mr. Wiseman: The assistant deputy minister meets with her provincial colleagues at different functions across the country. If, say, Quebec or some other province comes up with the definition we are looking for here, do you look into that? Or are they in the same dilemma we are in? If they had one, why could we not put it in, if it made sense?

Ms. Kelch: This is the same dilemma across the country. There is no clear definition. In fact, no other provinces actually regulate freight forwarders.

Mr. Wiseman: I just thought if they had, then we could use it here.

Hon. Mr. Fulton: We wish they had, but they do not. The industry itself cannot define it.

Mr. Morin-Strom: I would like some clarification on this. With this clause in the bill, who has to have the licence? The freight forwarder has to have the licence and he can get anyone to take the product for him without a licence. Is it considered that the freight forwarder is carrying the licence in that case?

Ms. Kelch: Except for the exception, as is defined there. But he has to use a licensed carrier. You cannot use illegal operators or people who do not have licences, if you yourself have a licence.

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Mr. Morin-Strom: I do not know. The way I read it, to me what it says is that if the intermediary has the licence, then this bill says the intermediary is viewed as "operating a commercial vehicle to carry goods for others for compensation within the meaning of" the act.

Ms. Kelch: Right.

Mr. Morin-Strom: Which means that the intermediary in fact is the operator of the vehicle. You have an unlicensed vehicle there and the intermediary asks that unlicensed vehicle to carry the product and the intermediary is then declared to be the person operating the commercial vehicle. An unlicensed vehicle then gets authorization to operate, through an intermediary.

Ms. Kelch: Could I ask our legal adviser to speak to this point?

Mr. McCombe: In subsection 3(8), the last half of that is a total exception. It takes somebody out of the intermediary category and puts him into a straight operator category. If he is acting only in his true agency situation—no undisclosed profits, he is only a sister of his principal, who is the shipper—then he needs an intermediary authority. If in fact he is operating a transportation service and is the operator of vehicles, he needs a full-fledged authority, not an intermediary authority. That is for that exception. From the word "except" on takes you out of the intermediary and puts you into subsection 3(1).

Mr. Morin-Strom: That is not the way I see it. The exception goes between the two commas and the exception ends after that second comma. The last two and a half lines of this are referring back to the main content of the subsection.

Mr. McCombe: We disagree on the interpretation. Perhaps legislative counsel can assist.

Mr. Yurkow: I agree with Mr. McCombe's interpretation of it.

Mr. Morin-Strom: Grammatically, it does not make sense.

Mr. Carrothers: If you note the comma in the third-last line, does that not change the import of the exception you are drawing attention to?

Mr. Morin-Strom: If we take the comma out?

Mr. Carrothers: No, if you note that it is there; in other words, the exception stops there and then the operative part of the subsection starts again with "the intermediary."

Mr. Morin-Strom: That is my contention. I am glad you agree with me.

Mr. Carrothers: I sure do. I believe I do, Mr. Morin-Strom.

Mr. Morin-Strom: The operative part of the subsection is those last two and half lines.

Mr. Carrothers: Yes, we can agree on that point.

Mr. Morin-Strom: That is, "the intermediary is operating a commercial vehicle to carry goods of others for compensation within the meaning of subsection 1." So, being the operator of that unlicensed vehicle—that vehicle and operator are not currently licensed—if you have an intermediary who is licensed, who is a freight forwarder, I suppose, he is now viewed as being the operator of this commercial vehicle and his licence will validate a vehicle that otherwise would be operating illegally.

Mr. McCombe: Mr. Chairman, can I correct what I said before? The problem of drafting these things four years ago and dealing with commas today—

Mr. Chairman: You might make Mr. Carrothers feel better.

Mr. McCombe: Subsection 3(8) requires licensing of intermediaries. The exception is where it is a straight agency business and he is operating for a prearranged fixed fee, there is no secret profit, he is not an independent businessman, he is acting as an agent. If he is acting as a straight agent, in legal terms, he does not require a licence under the act and subsection 1 does not apply.

Mr. Chairman: Unless he is doing that.

Mr. McCombe: Yes. If he is providing transportation service and pocketing the money secretly, he needs a licence. It is an intermediary licence rather than single source or whatever, but he needs a licence under the act. That is unique to this act in Canada.

Mr. Morin-Strom: You are uniquely allowing a truck driver with a truck which is not licensed to operate as long as it is a freight forwarder who gives him the business. A licensed freight forwarder can authorize the operation of an unlicensed truck and driver.

Mr. McCombe: No.

Mr. Morin-Strom: That is what the bill says.

Mr. Yurkow: If the freight forwarder has an operating licence, in which case he becomes an operator, simply because he happens to also be a freight forwarder does not exclude him from being required to obtain an operator's licence, at which point he is in the same position as any other operator.

Mr. Chairman: Mr. Morin-Strom, try taking out the words from the word "except" to the phrase "for the services." If you take that out and read it through, it makes it a little easier to deal with it.

Mr. Morin-Strom: Maybe we could get confirmation on this interpretation from counsel.

If an intermediary is licensed—I am not questioning whether the intermediary or the freight forwarder has to be licensed; I am assuming he is properly licensed—does this section say that freight forwarder, who is licensed, now is operating a commercial vehicle under the meaning of subsection 3(1)? If he has some goods to be moved and he goes and gets a truck and a driver who are not currently licensed in their own right to move that product, suddenly that truck and driver become legal because under subsection 3(1) it says,

"No person shall operate a commercial vehicle...unless it is done,

"(a) under an operating licence held by the person operating the vehicle."

The person operating the vehicle is no longer the driver; it is the freight forwarder, under clause 3(1)(a). It implies that the freight forwarder now is the operator and because the freight forwarder is licensed, the movement of those goods by that truck is authorized.

Mr. Yurkow: The freight forwarder would be in the same position as any other operator. I would have to go through the act again to work out what the obligations of an ordinary operator are, but all this section is aimed at is to say that simply because you act as a freight forwarder does not exclude you from the operation of the act or from getting an operator's licence if you are in fact an operator. Is that your interpretation, Jeff?

Mr. McCombe: You have to look at the relationship between the driver of that truck and the intermediary. If the driver is the employee of the intermediary, the intermediary operating a transportation service—

Mr. Chairman: Mr. McCombe, Hansard is having great difficulty in picking you up.

Mr. McCombe: You have to look at the precise legal relationship between the driver of the truck, who presumably is also the owner of that truck, and the intermediary. If the driver is hired and becomes an employee, then, yes, the intermediary is operating the truck. He needs more than an intermediary's licence if he is doing that. If, on the other hand, the owner-operator remains as an independent businessman, then he is subject to subsection 3(1) of the act regardless of whether or not the intermediary holds a licence.

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This is one of the numerous reasons there are problems in licensing freight forwarders, intermediaries or whatever because the act is focused on licensing the operator of a vehicle on the highway beyond municipal boundaries. A freight forwarder, per se, does not do that. He hires other licensed carriers to do that for him. He is a consolidator. He may or may not himself operate any vehicles. If he operates them, they may be within municipal boundaries, so it does not come under the act.

It is a confused area, but there was pressure to license this group, notwithstanding that generally they do not themselves operate vehicles. The problem of definition, for those of use who are lawyers, is serious.

When we regulate somebody, we would like to be able to describe who it is we are regulating. As Mr. Radbone mentioned, we sought advice from a number

of people involved in this area. The transportation lawyers are unhappy with the definition. Unfortunately, I am not aware that they have suggested an improved definition. What is in the act was the consensus of the best effort we could come up with.

Mr. Morin-Strom: My concern here is that what you appear to be authorizing, though, are freight forwarders who are fully licensed to be able to become, I think I have used the word "intermediaries," which allow unlicensed carriers to carry goods.

Mr. McCombe: It would be an offence for the freight forwarder to hire an unlicensed carrier.

Mr. Morin-Strom: But it says under the operative part of the section, the upper part, that it is not the guy actually driving the truck who is carrying the goods. It says the intermediary is the one who is operating the commercial vehicle, so the intermediary becomes the operator for the purpose of this bill.

Suddenly, it does not matter whether the guy driving the truck has a licence or not. Anybody can drive the product as long as he has a contract or under your terms is working for the freight forwarder who is validly licensed.

Mr. Haggerty: I can see that we can go on and on and debate this thing for quite a while, perhaps all afternoon. May I suggest that there is no doubt about it, there has to be a second look at this. Could we defer that until the legal staff has an opportunity to review this particular section to see about some of the questions that were asked? Maybe they can come with suitable wording that may be agreeable to all of us.

Mr. Chairman: There is nothing that would prevent us from agreeing to do that, as a committee, to stand down the section and come back at it later.

Mr. Haggerty: To stand down this section until staff takes a second look at it.

Mr. Wiseman: Along that line, I was following your reasoning and everything. I wondered who is responsible for the insurance in a case like that. Have you had a case where one thought it was the freight forwarder who should carry the insurance and the other thought it was the person he engaged in a transaction with?

Are we sure it is defined in there who carries the insurance so that we know they are properly covered? It seemed kind of complicated to me, as we went through it there. I would like to clarify in my mind that if the first person, the freight forwarder, is engaged in the transaction in the first place, then he is responsible to make sure he gets insurance.

Hon. Mr. Fulton: He would have to have insurance in order to get his licence in the first instance.

Mr. Wiseman: He would?

Hon. Mr. Fulton: Yes.

Mr. Wiseman: Could he say he is really not responsible because he has someone else to pull that load? That is all I am worried about. I go back

to my wife's uncle—to make a long story short—whom they kept blaming. The trailer blamed the tractor—the load, actually—for killing him. Neither one paid the claim until the old fellow died. It just went on and on. I just thought maybe it was clear in this who is responsible in the long run, because they flip-flopped it back and forth.

Mr. Carrothers: I want to offer an observation, as someone who has drafted at least a couple of documents in his life and in doing so has had to struggle with the desire to be clear and precise and at the same time let those documents be flexible enough to deal with changes in the future. When you do that, you tend to try to use terms that are well understood and try to not define too many things too precisely, or at least not go overboard in your definitions, in order to maintain that balance and keep your document able to deal with future changes and unexpected things; particularly, I would suggest, in an area such as this where there is a bit of change going on in the way freight is forwarded.

I think this is a very clear section; certainly to me it is very clear. I do not believe there is any need to offer definitions of the term "intermediary," which I suggest is the prime term here. It is pretty clear. We want to leave it general in order to catch new developments. I suggest this section could stand as worded. Perhaps, if there are no further speakers, I could move that we vote on it.

Mr. Wiseman: Could we go back to Mr. Haggerty's point?

Mr. Chairman: Before we do anything precipitous—

Mr. Morin-Strom: It was not the definition, I do not think.

Mr. Carrothers: Excuse me, Mr. Chairman. I would hate to do something precipitous.

Mr. Chairman: Do not do anything precipitous. That is equivalent to teasing the bears.

Mr. Wiseman: I wonder if we could go back to Mr. Haggerty's point. We seem to be spending a long time here. I do not know whether the ministry can define them a little better when we next meet or something like that. We are bogged down here now, so let's move on.

Mr. Chairman: Mr. McCombe, would it be helpful to have time to consult and come back and talk to the committee about this or would it not be?

Mr. McCombe: We have struggled with this one for a very long time, particularly over the past year. We did consult with the various interested parties, trying to come up with acceptable words. As I said earlier, this was the best we could do. I do not think I am going to improve on it overnight. I would love to if I could, but I do not hold out any hope for that.

Mr. Haggerty: Check with CP.

Mr. Yurkow: To define freight forwarder, you have not really solved the problem. I think Mr. Carrothers said it well. The issue is what an intermediary is. Having defined freight forwarder, you have defined one type of intermediary. The issue is that intermediaries, if they are not acting as true intermediaries, should be licensed as operators. I think centring on freight forwarder just removes the problem one step; it does not address it directly.

Mr. Chairman: Okay.

Mr. Wiseman: Could I just ask, from that, if our legal counsel is satisfied with what is in there?

Mr. Yurkow: Yes.

Mr. Morin-Strom: Talking with some of the Ontario Trucking Association people, they tell me that in fact in the meetings with the ministry there was no agreement on this section and most of the input to the ministry was opposing what is put into this particular subsection.

The point, though, goes well beyond just whether we have a proper definition of intermediary or freight forwarder. The point I was hoping to get a clarification on from the legal staff—one or the other—is whether this subsection in fact provides the authority for an unlicensed trucker to be able to carry goods because he is working for an intermediary. If he has got the goods through an intermediary, is he now authorized to truck goods on the basis of this subsection saying it is the intermediary's licence that will apply under subsection 3(1)?

Mr. Chairman: Mr. McCombe, do you want to tackle that?

Mr. McCombe: Yes. We say very clearly no. I do not know whether we want to get into a half-hour discussion, if you wish, Mr. Chairman, on the niceties and the interaction of the various sections of this act, but I can certainly assure you that lawyers on my staff will be prosecuting anyone who does that. It was because of that fact that we originally did not feel it was necessary to put in a provision requiring freight forwarders to be licensed, because they can move goods through others only if those others are licensed. Those others would be subject to fitness, public interest tests, etc., and would be required to have insurance. So to the extent that we license freight forwarders, there is some duplication of those safeguards.

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Hon. Mr. Fulton: I just want to clarify very quickly a comment made by our friend from Sault Ste. Marie, who is getting all his advice from the back of the room every few minutes.

Mr. Morin-Strom: I see the Liberals getting their advice from your deputy minister.

Hon. Mr. Fulton: We undertook a wide consultation process, and I see nothing to be gained here to compare the relative merits of one interest input to that process here that we went through. We heard from the folks who are defined as freight forwarders. Some people do not necessarily agree with that input. But we weighed those deliberations and this was our recommendation as a result of that.

Mr. Morin-Strom: I must react to the comments of the minister, who is contending that we are getting our information from people at the back of the room. Certainly, we do have to have some access to information because we do not have the kind of access the Liberal members of this committee have to your own people working in your ministry. Your ministry is giving information to the Liberal members in terms of what they should be doing in terms of responding to our points here. We have seen that happen this afternoon already.

That was following upon what happened last week when your ministry provided exclusive information, new information, which it did not want to provide the opposition members, clearly in contradiction to a long-standing policy in this Legislature that work done by ministry people should be provided to legislators in committees on an equal basis.

It was your actions last week which were totally improper and you were called to task for it. I do not think it is proper for you to be questioning the fact that we are getting advice to try to make this bill a better bill when you are trying to influence and prevent your own members from having an open mind on it.

Mr. Chairman: I did not detect a consensus on standing this section of the bill down. We are on subsection 3(8), where rather than delete the subsection, the people who are opposed to it can simply vote against it. Any other comments on subsection 3(8)?

Mr. Ferraro: I have a comment. I cannot let Mr. Morin-Strom's statement go without some retort. I would like to think that Mr. Morin-Strom has been around as long as I have, and he has. He knows the way committees are run. Whether he likes it or not, we are the government. This is a ministry of the government and there is co-operation to some degree, and there is some flexibility. No more would we be critical of you when you take advice from Bob White, or whomever, as to how you should vote on an issue.

I say to you, if you are totally amazed today as to procedures, it is a revelation to possibly only you in Ontario. You can consult with whomever you want. We have no problem with that at all.

Mr. Chairman: Order. We have had the minister, Mr. Morin-Strom and Mr. Ferraro all commenting on the access to information. Is there anyone else who wants to deal with subsection 3(8) of the bill? If not, all those in favour of subsection 3(8) please so indicate. Is it clear what I am putting to the members? Do you want a clarification?

Mr. Brown: I do not understand.

Mr. Chairman: We had worked our way down through subsection 3(7), and when we came to subsection 3(8), Mr. Morin-Strom had indicated originally he was going to move to delete rather than to vote against it. So we have been strictly debating subsection 3(8). I am calling now as to whether subsection 3(8) shall be carried as it is, or not be carried as it is, because people who are opposed to it can simply vote against it rather than move to delete it.

All those in favour of subsection 3(8) please indicate. All those opposed. It is carried.

Anything on the rest of section 3 of the bill? I have no amendments handed in.

Section 3, as amended, agreed to.

Section 4:

Mr. Chairman: The only amendments I have on section 4 are additions to the section rather than amendments to existing sections. Is there any comment, debate or amendments?

Mr. Wiseman: I would move that in subsection 4(1), we replace the word "registrar" with the word "board," and then in subsections 4(2), (4), (5), (7) and (11).

Mr. Chairman: If you could scribble out—

Mr. Wiseman: It is just one word, the word "registrar" to "board." Do I have to do that in each case?

Mr. Chairman: No. If you just put what it is you want done and the subsections it applies to so that the clerk has something in front of her.

Mr. Carrothers: All you are doing is moving that the word "board" replace the word "registrar" in subsections 4(1), (2) and (3), if you want to write that down.

Mr. Chairman: I think he had more subsections than that, though. Did you want to speak to that, Mr. Wiseman?

Mr. Wiseman: I just feel it should be the board rather than the registrar in each of those cases.

Mr. Carrothers: I suppose that throws us back into the issue we were talking about at the beginning. I would suggest to Mr. Wiseman that the issuing of a licence, the actual physical signing and mailing of a piece of paper, is an administrative task and that a board which is constituted to hear public input and decide and issue public policy would find itself administratively burdened if it were issuing those licences.

I think it is more appropriate that be left with an administrative wing of the ministry, such as the registrar, rather than add it to the function of a board, which is really to hear public input and decide a matter of public policy. Because it is such an administrative matter, it would be better left at the ministry. Therefore, I do not think I can support your amendment.

Mr. Chairman: Before we move on with that, am I right that it is the following subsections, Mr. Wiseman, subsections 4(1), (2), (4), (5), (7) and (11)?

Is there agreement by the committee that we will debate this for all subsections, as it really is the same thing?

Mr. Dietsch: One size fits all.

Mr. Chairman: Something like that, yes.

Mr. Morin-Strom: The Supreme Court of Ontario recently ruled that the words "provincial transport board" as they appear in the Motor Vehicle Transport Act, 1987, mean in the case of Ontario the Ontario Highway Transport Board. We know that the minister is now appealing that and reasserting his contention that in fact it is the Minister of Transportation. That decision, however, was taken against the background of laws which existed at the time the case was heard, including the Public Commercial Vehicles Act. With the passage of this new bill, Bill 88, much of the operative sections of the Public Commercial Vehicles Act will be replaced by the new Truck Transportation Act and, in particular, by various clauses in this section 4.

I understand that many lawyers are of the view that the courts may very

well then rule that the provincial transport board under the federal bill is not the Ontario Highway Transport Board but rather will be the registrar of motor vehicles, which is different than either of the two sides of the case currently before the Supreme Court, where the minister is claiming he is the transport board and the court's judgement to this point is that it is the Ontario Highway Transport Board.

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The types of authorities that are issued in section 4 would very possibly result in the declaration that the registrar of motor vehicles, for extraprovincial trucking purposes, for purposes of the federal bill, will now become Ontario's provincial transport board. This would have the effect of eliminating the possibility of public interest hearings in Ontario, which would be clearly undesirable and which would, in fact, be apart from the intent of this bill.

I would agree with my colleague Mr. Wiseman that the changes that have been moved would clarify the fact that, in terms of the operative sections, it is not the registrar who is issuing licences, etc., in these various clauses, but in fact it should be the Ontario Highway Transport Board, so as to ensure that that is clearly perceived and recognized in law as our provincial transport board. That is vital, so that we do not preclude the possibility of public interest hearings in the future.

I would read from the Supreme Court judgement, where the majority view was that subsections 8(3) and 8(4) of the MVTA apply only to a province where "the provincial transport board is authorized to hold a public hearing." Since the minister is not authorized to hold a public hearing and will not be authorized under this bill, either, to have the authority to hold a public hearing, continuing, the sections would not apply in Ontario if the minister is the provincial transport board.

The majority judgement of the court ruling, as well as, in this case, the minority judgement, took the minister's side in terms of who is the provincial transport board. Both agreed, however, that there is only one provincial transport board. If we continue through this bill to have the registrar acting as the provincial transport board in most aspects of the issuing of licences, it would appear likely the courts would declare that the registrar, in fact, is the provincial transport board and we would be in the absurd situation of not being able to have public interest tests at all because, as the bill quite clearly shows, the registrar will not be authorized to hold public interest tests, only the OHTB is so authorized.

Mr. Hobbs: I guess I could make the point that we are not debating the MVTA. What is under debate is the Truck Transportation Act and the different functions and who does them are set out very clearly. The problem with the MVTA was that they were not. In terms of the TTA, which is provincial legislation, where we indicated previously that the Ontario Highway Transport Board is the Ontario Highway Transport Board when it is referred to in here, its functions with respect to public interest tests are set out very clearly.

As I mentioned last time around, "provincial transport board" is a federal term because they have to deal with provinces, but the functions and who does what are set out very clearly in the Truck Transportation Act.

Mr. Morin-Strom: Are you saying that this bill has no effect on the operation of the federal legislation?

Mr. Hobbs: Yes.

Mr. Morin-Strom: How can you say that when in fact the court decisions on both sides indicate the opposite of that?

Mr. Hobbs: The court decision had to do with a piece of federal legislation.

Mr. Morin-Strom: The federal legislation is tied into what is the provincial transport board.

Mr. Hobbs: For the purposes of the federal legislation.

Mr. Morin-Strom: The whole case you just fought on that federal legislation was based on who is the provincial transport board under the current Public Commercial Vehicles Act or whatever it is.

Mr. Hobbs: For federal purposes.

Mr. Morin-Strom: For federal purposes. Now we are going to have a new Truck Transportation Act and we are going to have a whole new court case trying to determine which, in fact, is the provincial transport board. Is it the minister, is it the registrar or is it the Ontario Highway Transport Board?

Mr. Hobbs: There will be no determination of who, under the Truck Transportation Act, is the provincial transport board because that phrase is not used anywhere in the legislation.

Mr. Morin-Strom: Are you going to contend that the provincial transport board is the registrar after this bill is passed?

Mr. Hobbs: We are not talking about anything in the Truck Transportation Act being the provincial transport board. We are talking about, very clearly, the fact that there is an Ontario Highway Transport Board. "Provincial transport board" is a federal term. It is not used in this piece of legislation.

Mr. Morin-Strom: We currently have you fighting a court case in which you are declaring that the minister is the provincial transport board.

Mr. Hobbs: For the purposes of the federal legislation.

Mr. Morin-Strom: Fine. For the purposes of the federal legislation. When this one is passed, who are you going to claim is the provincial transport board?

Mr. Hobbs: We are not claiming anybody is the provincial transport board. We are defining the board—

Mr. Morin-Strom: You are going to have to.

Mr. Hobbs: No. "Provincial transport board" is a federal term. They have to use "provincial" generally because they are delegating responsibility to different provinces. In Ontario, we have spelled it out as clearly as we possibly can in terms of the definition of "board," which means the Ontario Highway Transport Board.

Mr. Morin-Strom: Why can you not give a straight answer?

Mr. Hobbs: I am.

Mr. Morin-Strom: You cannot give a straight answer. I asked you who, after this bill is passed—you are the ones who want this bill. You are the ones who are currently contending that the minister is the provincial transport board. After this bill is passed—

Mr. Hobbs: For the purposes of the federal legislation.

Mr. Morin-Strom: How about putting in a qualifier? For the purposes of the federal legislation, once this bill is passed, who are you going to claim is the provincial transport board?

Mr. Hobbs: We are not claiming anybody is the provincial transport board, to use the federal term.

Mr. Morin-Strom: You are certainly not claiming it at all, because you will not answer the question.

Mr. Chairman: Are you asking if, once this bill is passed, when the federal legislation refers to the provincial highway transport board—

Mr. Morin-Strom: No, the term is "provincial transport board."

Mr. Chairman: The provincial transport board—who will they be talking about?

Mr. Morin-Strom: In Ontario, who will they be talking about?

Mr. Chairman: Who will they be talking about in Ontario?

Mr. Hobbs: That depends on what happens with respect to the appeal.

Mr. Morin-Strom: In other words, you are not willing to state now what your position is going to be or what you are going to claim then? We know you are claiming now it is the minister.

Mr. Hobbs: We know what our preference is. In terms of the federal legislation, it is the minister.

Mr. Morin-Strom: Will it continue to be the minister after the TTA?

Mr. Hobbs: That depends on what happens in the court case. I come back to the point that we are debating a piece of provincial legislation which does not deal with the legal term "provincial transport board."

Mr. Chairman: Mr. Morin-Strom, what if you put it this way: Who would they be talking about (a) if they lose the appeal and (b) if they win the appeal? Why do you not put the question that way?

Mr. Morin-Strom: Okay. If you win the appeal, that will have established that under the old legislation, the PCVA, the minister is the provincial transport board in Ontario. Will you continue—

Ms. Kelch: With all due respect to the chairman, there is still some confusion in terms of what the question is because the provincial transport board is a concept that is only alive in the Motor Vehicle Transport Act. So irrespective of whether TTA were to go ahead or not go ahead, we would still

go through the court process, as the minister has indicated. Our preference in terms of the appeal process is that the minister is the provincial transport board with respect to the MVTA.

In the Truck Transportation Act, as the deputy has indicated, we do not have that term "provincial transport board." What we have are the functions that are important in terms of the regulatory scheme outlined and very specifically assigned to the board, the Ontario Highway Transport Board, and the registrar. That is what the deputy has described, as you go through the legislation outlined there, rather than using that PTB or provincial transport board notion.

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Mr. Chairman: Does that help, Mr. Morin-Strom?

Mr. Hobbs: In terms of Quebec, for example, in the Quebec legislation the phrase "provincial transport board" for their own intra, which is similar to the act we are passing now, talks about specific Quebec regulatory boards. It does not use the phrase "provincial transport board." We cannot be more explicit than to say that "board" means the Ontario Highway Transport Board, and we have set out very clearly in our minds what the board does, what the minister does, what the registrar does.

Mr. Morin-Strom: Is it possible that a court will rule that it is the registrar who is the provincial transport board?

Mr. Hobbs: Not with respect to the Truck Transportation Act.

Mr. Morin-Strom: When one looks at the federal legislation, as I understand it, that legislation determines within each province what is the transport board and looks at the various powers and what appears to be carrying out the tasks of the transport board. Is it possible that because of the number of powers that are going to go to the registrar under your proposed Bill 88, the federal court would then rule that in fact it is the registrar who is the provincial transport board?

Mr. Hobbs: I think it is unlikely. We do not know, but that has absolutely no bearing on what is contained in Bill 88, which is a piece of provincial legislation.

Mr. Chairman: Mr. McGuinty was next on the list.

Mr. McGuinty: The question that occurs to me is that we have endured a certain kind of sufferance and forbearance this afternoon regarding what may be perceived as nitpicking obstructionism. I would not call it that. I will reserve judgement.

Mr. Dietsch: Why would you reserve judgement?

Mr. McGuinty: I will tell you why. I am a fellow academic with Mr. Morin-Strom. Man always asks for a reason, approximate or ultimate. If I could become aware of what Mr. Morin-Strom has in mind in terms of his concerns with the bill generally, and the place of the incidental amendments within it which he is suggesting, then perhaps we could—I think I can talk on behalf of my colleagues—endure them.

At the risk of taking my finger out of the dike, I would ask Mr.

Morin-Strom to try to define for us in three minutes or less what his concern generally is with the bill, because if we proceed in this nitpicking way we will be here until next September and get nowhere, unless we submerge our forbearance and patience and charity and simply ride over. I honestly do not know the general purpose behind your concern for these particular clauses.

Mr. Chairman: If we go back to Mr. Morin-Strom, I would ask him to keep in mind that the general principles of this bill were debated on second reading. You really must confine yourself to the section of the bill we are presently addressing and not respond to entreaties by Mr. McGuinty to deal with the bill in a broader sense.

Mr. Dietsch: I thought we were dealing with the motion Mr. Wiseman put on the floor with respect to the removal of "registrar." I somehow or other feel that we have strayed considerably.

Mr. Chairman: A couple of points could be made. One is that at the very beginning of the afternoon we had a long debate about "board" but it did not deal with "board" vis-à-vis "registrar." I think it is in order for us to be debating "board" versus "registrar" and so forth.

Interjection: Is that "b-o-r-e-d?"

Mr. Chairman: As we move through the bill, we will have to be careful that we do not repeat the arguments, because "registrar" is used throughout the bill. Depending on what happens on this section, we will have to be careful that we do not contradict what has already been passed or amended previously.

Mr. Wiseman: I just wondered if you could clarify something for me. We have different licences we are going to give. Some come under the jurisdiction of the federal government and some under the provincial. If we say the Ontario Highway Transport Board, then this whole court decision came around, call it the provincial transport board or whatever; if we lose the appeal, will we still be known as the provincial transport board as far as the feds go? Then where we have jurisdiction, we will be the Ontario Highway Transport Board and—

Mr. Chairman: You are not taking us back in time to a couple of hours ago, are you? I think you are.

Mr. Wiseman: Am I?

Mr. Chairman: I think so. There is a general feeling that you are, anyway.

Mr. Wiseman: It is just not clear.

Mr. Chairman: Can we stick to the debate on Mr. Wiseman's amendment to replace the word "registrar" with "board" in subsections 4(1), (2), (4), (5), (7) and (11)? Can we restrict ourselves to that debate?

Mr. Haggerty: I have been waiting for Mr. Wiseman to give his reasons for it.

Mr. Wiseman: I thought it would make it simpler, and I would like to see the board deal with it rather than the registrar.

Mr. Morin-Strom: I would like to answer why this is critical. It has to do with the future of public interest hearings in Ontario following the enactment of this bill, if it is passed unamended. I have information from the Ontario Trucking Association, from other lawyers in the province as well, presenting concerns about the powers that are going to go to the registrar rather than the Ontario Highway Transport Board, and the consequences that will have in terms of the right to be able to have public hearings in the province of Ontario. Their contention is that they will not be permitted.

We received today—I saw it at the same time as you; you have received the same thing now. You probably have not looked at it—

Mr. Dietsch: He has the deluxe version.

Mr. Haggerty: I do not have that.

Mr. Morin-Strom: You should. It is in front of you.

Interjections.

Mr. Morin-Strom: I have the deluxe one. On page 5, it refers to the public interest test of the Motor Vehicle Transport Act. It talks about the registrar here in paragraph 3.

I am showing you where the rationale is; how important it is whether the registrar has the power—which I agree with my colleague should be taken away from the registrar and given instead to the Ontario Highway Transport Board. It must be remembered that the decision as to who is the provincial transport board within the meaning of the MVTA turned, in substantial measure in that court case, on an interpretation of the powers allocated to the minister and the OHTB under the Public Commercial Vehicles Act.

That is the old act. Now we are talking about the Truck Transportation Act. The TTA replaces that act. That is what we are debating. This act reduces the power of the OHTB very substantially, and this is one of the clauses where it does. It gives the powers to the registrar rather than the OHTB.

They go on to say, "What are the consequences going to be of reducing those powers?" It reduces the power very substantially. In addition, it allocates some decision-making power to the registrar, which is mentioned in this clause of the registrar.

It would be possible once this bill, the Truck Transportation Act, is enacted, to take the position either that the registrar, or indeed the minister—I guess they are going to take that position—is the provincial transport board, in view of the diminished powers of the Ontario Highway Transport Board.

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It would, of course, require costly and time-consuming litigation to resolve the point. So we are leading to another big fight in the law courts as to who in fact is the provincial transport board. I recognize we determined before we are not going to establish that specifically in the bill, and we did not do that in the first clause. Now we are doing it, though, by implication by the allocation of the powers. In section 4, various powers are going over to the registrar. The courts are going to say: "We have not defined what the provincial transport board is. We are going to look at who has the powers. If

the registrar has the powers, if they look like the transport board, if they smell like the transport board, if they sound like the transport board, they must be the transport board." And they will say, "The registrar is the transport board." So it says.

We are going to have a big court case on that. Such litigation will continue the state of confusion and uncertainty which has crippled the application of the Motor Vehicle Transport Act in Ontario for 10 months now. More importantly, however, a decision that the OHTB is not the provincial transport board would eliminate the public interest test under the MVTA since, under this new bill, the TTA, neither the registrar nor the minister has the power to hold a public hearing. All three judges, the majority and the minority judges, agreed that if the minister was the transport board, we could not have public hearings in Ontario. I think I have made my point in total as to the implications.

Mr. Chairman: Did you want to get in on the debate?

Mr. McGuinty: A point of disorder.

Mr. Chairman: A point of order. I recognize you; all right.

Mr. McGuinty: I think the opposition is privy to background information that we do not have.

Mr. Chairman: That is not a point of order.

Mr. McGuinty: I said disorder.

Mr. Chairman: Mr. Hobbs, would you like to make a contribution to this?

Mr. Hobbs: Yes. We completely disagree with the interpretation that is being put forward on that as it relates to the Truck Transportation Act. The powers of the registrar—there is a change in function being introduced here. There is a fitness test which never existed before with a safety fact rating attached to it. The registrar does that. With respect to the public interest test, the board is the body that triggers the public interest test. Subsection 9(1) says, "A hearing to conduct a public interest test pursuant to a request under clause 7(4)(b) shall be held only if the person who asked for the test makes out a written case to the board..." which is, as we have already defined it, the Ontario Highway Transport Board.

Interjection: And under section 8.

Mr. Hobbs: Yes. The registrar is given specific functions, but none of them have anything to do with the public interest test.

Mr. Morin-Strom: That is the problem.

Mr. Hobbs: No, it is not the problem.

Mr. Chairman: Mr. Morin-Strom, can we hear from some other hands here.

Mr. Carrothers: I wonder if I just might interpret legalese for my colleague opposite. The statement which he was reading begins with the words "it would be possible." As an author of hundreds of sentences beginning with

that phrase, you are stating, when you do that, that it is an argument one could make. There is no statement in here that it is likely it would be accepted. I think it would be certainly my view that position would not be likely accepted.

I think we are making a bit of a mountain out of something that does not exist. I further go on to say that this still relates to the federal legislation. I think it is incumbent upon us, when dealing with this bill before us, to appropriately structure it and to appropriately distribute the powers. Certainly the lack of clarity that exists in the MVTA, it is our obligation to make sure it does not exist here. It would be my view it does not exist. The words that are used are very clearly defined and I think we should just proceed.

Mr. Morin-Strom: I wonder if we could ask one question of the minister.

Mr. Chairman: Yes.

Mr. Morin-Strom: Does the minister agree with Mr. Carrothers that while it is possible, it is very unlikely that once the TTA is enacted the registrar, or indeed the minister, would be the provincial transport board, in view of the diminished powers of the OHTB?

Hon. Mr. Fulton: Yes, it is unlikely. I agree with Mr. Carrothers. I might point out that there is provision in this legislation, which I am sure you have read, as you have read everything else, that allows the minister to direct that public interest tests be held. It is very clear; it is right there.

Mr. Morin-Strom: I do not understand how you can say it is unlikely, when that used to be your position.

Mr. Hobbs: With respect to what?

Mr. Morin-Strom: In that earlier argument we had before, you were claiming that the minister was the provincial transport board, and now all of a sudden you say you think it is very unlikely that could be the case.

Mr. Hobbs: With respect to what?

Mr. Morin-Strom: Mr. Carrothers just said he thinks it is very unlikely that the minister would declared the provincial transport board—

Mr. Hobbs: That is right.

Mr. Morin-Strom: —and you agreed with him.

Mr. Hobbs: That is right.

Hon. Mr. Fulton: You misunderstood his response, I think.

Mr. Carrothers: I was just helping you understand that when someone puts "it would be possible to argue," at the beginning of his sentence, he is hedging his bets. A much stronger statement would be, "It is my opinion that...." If those words were there, you might want to get concerned.

Mr. Chairman: Is there any other debate on section 4 amendments as put by Mr. Wiseman? If not, all those in favour of the amendments put by Mr.

Wiseman please indicate? All those opposed? The amendment is lost.

Motion negatived.

Mr. Chairman: Is there any further debate on section 4 up to the end of the section as printed in the bill, without dealing with the amendments to be moved by the government that will add to the section?

Shall section 4 as printed in the bill carry?

Mr. Morin-Strom: I would like to have 20 minutes. Could we put the vote off until tomorrow?

Mr. Chairman: There would be no problem with putting the vote off. There can be a vote at any time you want to vote on a section.

Mr. Morin-Strom: I see we are two minutes away from six o'clock.

Mr. Chairman: Is that appropriate then, rather than doing it now?

Mr. Haggerty: Do it now.

Mr. Chairman: The fact is that if a member of any party calls for a vote with a 20-minute delay, he has a right to do so. We cannot tamper with that rule.

What is the wish of the committee? Mr. Morin-Strom has called for a 20-minute delay before the vote is taken on section 4 in its entirety. Is it the wish of the committee to have the vote at 6:20 or to have the vote tomorrow?

Mr. McGuinty: Until tomorrow will be more than 20 minutes.

Mr. Chairman: When the committee comes back into session tomorrow afternoon following routine proceedings, we could then put the question. Mr. Morin-Strom?

Interjections.

Mr. Dietsch: Could I ask a question for clarification, please? What you are suggesting is that the vote would take place tomorrow when routine proceedings are done and at the beginning. I guess I would like to know if that means the debate starts all over again, or are we going to have the vote?

Mr. Chairman: No. The debate would be concluded and we would have a vote on section 4 only. If the members agree to that, then we should set a time because it is not fair to members who might be delayed in the scrum or whatever. Would members be prepared to have the vote right at 3:30?

Mr. Haggerty: Right at 3:30.

Mr. Wiseman: Would we have time so that we could finish section 4? Does anyone have any problems with—

Mr. Chairman: I assumed we had finished debate on section 4 entirely.

Mr. Wiseman: I thought the minister had a couple of amendments.

Mr. Chairman: That is correct, following what is printed in the bill now. We were going to vote on section 4 right through to subsection 13, and then the minister has two amendments that add subsections 14 and 15 to the bill.

Mr. Wiseman: I just thought that if we dealt with those, then we could deal with all of section 4.

Mr. Chairman: Okay. That is fair.

Mr. Wiseman: And maybe if it is straightforward, we could get it done tonight.

Mr. Chairman: Is that agreed then, that following routine proceedings, we will begin the debate on the minister's amendments after which we can vote on the section of the bill and members can call for their 20-minute delay then?

1800

Mr. Carrothers: I think we should have the vote on Mr. Wiseman's amendment at the time, and then you will move further amendments.

Mr. Chairman: I do not hear a consensus on that.

Mr. Carrothers: It would seem to me to be the appropriate order of business.

Mr. Morin-Strom: I move we adjourn the debate.

Mr. Chairman: Just before you do that—

Interjections.

Mr. Chairman: Order.

—we have a very simple decision to make. One is whether or not to have the vote on subsections 4(1) to (13) right at 3:30 or whether to move at 3:30 to the minister's amendments, which add two sections to the bill. What is the desire of the committee?

Mr. Haggerty: I thought he moved an adjournment over there, which is not debatable.

Mr. Chairman: We are not debating the adjournment.

Mr. Haggerty: He moved it, though.

Mr. Chairman: We are not debating the adjournment. We are trying to get a consensus so that most members can be satisfied with the decision that we make collectively. What do the opposition members say? Do you want to vote?

Mr. Wiseman: Now?

Mr. Chairman: No, no, at 3:30 or following debate on the two additions.

Interjections.

Mr. Chairman: All right. Is that a consensus that at 3:30 we will vote on subsections 4(1) to (13)? Is that appropriate? Minister? You can be here for that. Of course, you do not vote anyway. After that, we will proceed with the minister's amendments. All right?

The minister had indicated to me before about the schedule for next week. Did you want to go into that?

Hon. Mr. Fulton: Yes, if you will allow that now. There is every likelihood that I cannot be here. I stated to you earlier that I would be out of town, in fact out of the province. That may not necessarily be the case, but I do not think I will be able to attend the committee on Monday in any event.

Mr. Chairman: What the committee then must decide is, do you wish to not hold a meeting on Monday, or do you wish to hold the meeting without the minister here?

Mr. Wiseman: Stand it down until the minister is free.

Mr. Chairman: All right. A motion to adjourn has been moved.

Hon. Mr. Fulton: Maybe we could finish tomorrow in that case.

The committee adjourned at 6:03 p.m.

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STANDING COMMITTEE ON RESOURCES DEVELOPMENT

ONTARIO HIGHWAY TRANSPORT BOARD AMENDMENT ACT
TRUCK TRANSPORTATION ACT

THURSDAY, NOVEMBER 3, 1988



STANDING COMMITTEE ON RESOURCES DEVELOPMENT

CHAIRMAN: Laughren, Floyd (Nickel Belt NDP)

VICE-CHAIRMAN: Wildman, Bud (Algoma NDP)

Black, Kenneth H. (Muskoka-Georgian Bay L)

Brown, Michael A. (Algoma-Manitoulin L)

Dietsch, Michael M. (St. Catharines-Brock L)

Grier, Ruth A. (Etobicoke-Lakeshore NDP)

Leone, Laureano (Downsview L)

Marland, Margaret (Mississauga South PC)

McGuigan, James F. (Essex-Kent L)

Tatham, Charlie (Oxford L)

Wiseman, Douglas J. (Lanark-Renfrew PC)

Substitutions:

Black, Kenneth H. (Muskoka-Georgian Bay L) for Mr. Leone

Carrothers, Douglas A. (Oakville South L) for Mr. Black

Cousens, W. Donald (Markham PC) for Mr. Wiseman

Miller, Gordon I. (Norfolk L) for Mr. Brown

Morin-Strom, Karl E. (Sault Ste. Marie NDP) for Mrs. Grier

Roberts, Marietta L. D. (Elgin L) for Mr. Leone

Clerk: Mellor, Lynn

Staff:

Richmond, Jerry M., Research Officer, Legislative Research Service

Yurkow, Russell, Legislative Counsel

Witnesses:

From the Ministry of Transportation:

Fulton, Hon. Ed, Minister of Transportation (Scarborough East L)

Hobbs, David G., Deputy Minister

Kelch, Margaret, Assistant Deputy Minister, Safety and Regulation

McCombe, C. Jeffares, Director, Office of Legal Services

LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON RESOURCES DEVELOPMENT

Thursday, November 3, 1988

The committee met at 3:31 p.m. in committee room 1.

TRUCK TRANSPORTATION ACT
(continued)

Consideration of Bill 88, An Act to regulate Truck Transportation.

Section 4:

Mr. Chairman: The standing committee on resources development will come to order. Yesterday when we adjourned, we had just finished dealing with an amendment by Mr. Wiseman, which was defeated. We were then to move on to vote on subsections 4(1) to 4(13) as they are presently in the bill. When that was dealt with, then we were going to move on to two proposed government amendments. That is where we are at now.

We had agreed as well that we would vote on subsections 4(1) to 4(13) as they presently stand in the bill, right now at 3:30. It is agreed? There is no confusion in what we are doing? Good.

Mr. Cousens: I am sorry I kept you waiting for half a minute, but you are talking about page 5?

Mr. Chairman: Pages 7, 8 and most of 9. We are not voting on any amendment at this point. We are voting on the bill as it is presently written, subsections 4(1) to 4(13).

Mr. Cousens: For further clarification, when the committee rose last evening, the next item on the agenda was to be the vote?

Mr. Chairman: Yes. We had agreed we would vote at 3:30. That was agreed by all three parties.

Mr. Cousens: Is it time now to ask for a recorded vote?

Mr. Chairman: No. It would normally be, Mr. Cousens, but there was a three-party agreement that we would vote at 3:30.

Mr. Cousens: That is fine. Can it be a recorded vote?

Mr. Chairman: Oh, recorded, I am sorry.

Mr. Cousens: Sorry. I only want to make sure it goes on the record.

Mr. Chairman: No problem; that can be done. Does everyone understand what we are voting on?

The committee divided on whether subsections 4(1) to (13) as they are presently in the bill should stand as part of the bill, which was agreed to on the following vote:

Ayes

Black, Carrothers, Dietsch, McGuigan, Miller, Tatham.

Nays

Cousens, Morin-Strom.

Ayes 6; nays 2.

Mr. Chairman: We now move to a government motion to add two subsections to section 4.

Mr. Carrothers moves that section 4 of the bill be amended by adding thereto the following subsections:

"(14) It is a condition of every operating licence that neither the holder thereof nor the driver of a public truck operated thereunder is in contravention of the Customs Act (Canada) and the Immigration Act, 1976 (Canada) and the regulations made thereunder.

"(15) The driver of a commercial motor vehicle registered in a jurisdiction other than a province or territory of Canada and operated under the authority of an operating licence shall carry documents indicating compliance with subsection 14, and subsection 22(2) applies to such documents."

Mr. Carrothers: I just want to indicate that these additions are being made to the legislation in order to deal with the concern expressed during the hearings that drivers who perhaps might not have complied with Canada's immigration and other regulations should be doing so, and were to provide a mechanism in this act to basically enforce that and provide some sort of penalty if they were not in compliance with immigration law.

Mr. Morin-Strom: I have some concerns about jurisdiction on these particular subsections. They would appear to be an attempt by the province to take over federal legislation. I wonder about the constitutionality of the province including within its legislation specific sections of federal legislation with the intent, I guess, of being able to enforce the federal law. Is this not more a matter of federal jurisdiction?

Ms. Kelch: I guess what we are really trying to do here is further to the concerns that have been expressed through the public hearings. Those concerns were very specifically that there was contravention of these two pieces of federal legislation. Therefore, we are trying to ensure that people are adhering to this federal legislation, not that we are going to enforce it. It will be a condition, as Mr. Carrothers has indicated, of every operating licence that the applicant in fact has to be in compliance with the federal legislation.

Mr. Morin-Strom: What would happen if the federal legislation changed? For example, you make reference here to the Immigration Act, 1976. What if a new Immigration Act is passed and you have this specified in law. Does this become invalid or are we trying to enforce an old law?

Ms. Kelch: My legal adviser indicates that the Interpretation Act takes over.

Mr. Morin-Strom: I do not know what that means.

Mr. Carrothers: The answer has been given. I just want to point out for the benefit of my colleague that the Interpretation Act indicates that all statutes of the province are to be interpreted, incorporating new legislation which replaces legislation that has a specific reference in the act that is passed, so if this act is changed, the new act is automatically incorporated under the Interpretation Act.

Mr. Morin-Strom: Is it the province's view that these acts are not being enforced today in Ontario?

Ms. Kelch: We do believe that there is some room for improvement. We indicated that in the public hearings when we heard from individuals who had raised this issue. In fact, Mr. Fulton indicated—he tabled a copy of a letter he sent to the federal ministers responsible for these pieces of legislation—that he would also like his enforcement officers to be empowered in terms of enforcing these pieces of legislation and assisting in enforcing these pieces of legislation.

Hon. Mr. Fulton: My recollection is that question was raised. I think I tabled that response in the public hearing in Sault Ste. Marie.

Mr. McGuigan: You raised it a number of times.

Hon. Mr. Fulton: It is similar. I am not a lawyer, so do not hang me on this, but it is not unlike keeping track of Criminal Code offences, which are federal, with respect to your driving record, which is provincial.

Mr. Morin-Strom: Are you saying that under law your officers cannot do anything about the federal regulations unless you have it under the provincial law?

1540

Ms. Kelch: Two things: One is that the suggestion that is here before you in terms of the amendment very much makes it a requirement for a potential applicant to be in concurrence with the federal pieces of legislation. In addition to that, the minister also has requested the federal ministers to allow provincial enforcement officers to assist in enforcement of that legislation with respect to trucking.

Mr. Cousens: How do you find that out? What is your method of determining when there has been a breach in any of the federal acts. Our provincial inspectors are not necessarily looking for that when they are out on the job, are they?

Ms. Kelch: I guess you were not part of the public hearings. There were a variety of concerns and suggestions made that the federal enforcement officers in fact do look for this kind of thing, but also, through a complaint mechanism, we could draw to their attention that there are potential problems. We would obviously use that sort of mechanism with respect to provincial enforcement as well.

Mr. Cousens: At what stage does it cease to be a potential problem and become a problem?

Hon. Mr. Fulton: When you find an offender.

Mr. Cousens: When you find an offender, what action is taken as of that time, when you are talking about this?

Ms. Kelch: They would be charged with operating with an invalid licence.

Mr. Cousens: What happens at that particular time? Are they allowed to continue en route or in service with their vehicles? Are they stopped?

Ms. Kelch: We do have detention powers in this piece of legislation.

Mr. Cousens: I thought so.

Ms. Kelch: I guess there would have to be some discretion shown by the enforcement officer as to whether this was sufficient for a detention to take place.

Mr. Cousens: Are there regulations drafted around this, or is it purely the interpretation of the inspectors at that time?

Ms. Kelch: Could you explain to us a little better what the question means.

Mr. Cousens: I am concerned whether, if someone is found to be in contravention of either act, there is any interpretation. I think they are very far-reaching acts and have many ramifications. To what extent are they going to be affecting the individual transaction that a person coming across the border is going to have? At that point, are they in jeopardy? There are a lot of areas in which they could be in jeopardy, as I look at them. I think that a good Canadian is going to want to be—I guess I go to another question as well, and that is, why even have it in the act because you are going to want to have it anyway, are you not?

Ms. Kelch: Again, I guess part of the reason or the stimulus behind this suggestion was very much that several people who came before us in the hearings had the feeling that individuals were operating inappropriately according to the rules of the Immigration Act and the Customs Act; i.e., that they were carrying out incidental moves in a much larger way than was in fact allowed them under the authority of these pieces of legislation. That was what was described to us as the problem. This is an attempt to deal with that problem.

Mr. Cousens: There are no other ways in which you could police that then under existing Ontario legislation. Is that what your point is?

Ms. Kelch: We indicated the earlier suggestion, which was the minister asking his federal counterparts in this area if provincial enforcement officers could participate. We felt that was a potential solution as well.

Mr. Cousens: And they have agreed to that?

Ms. Kelch: We do not know yet. We have not yet heard.

Mr. Cousens: What is the status of those discussions?

Ms. Kelch: We are still waiting to hear back from those federal ministers, but we believe this is the appropriate way to deal with it from the point of view of a provincial statute.

Hon. Mr. Fulton: We will probably know on or about November 22, I suspect.

Mr. Cousens: You might be dealing with different people. Is that what you are saying?

Mr. Dietsch: I certainly hope so. We will get better answers.

Mr. McGuigan: I would like to point out that in this day of just-in-time delivery, and in fact even before then, timely deliveries are very important. People are sending things to participate in a sale or to participate in a manufacturing process. It is a real detriment and a real costly throwback to the trucking company if it gets its truck stopped at an inspection station and it cannot proceed. It is a real strong deterrent to their doing that. They would probably lose the contract to ship further goods. They get a black mark against them as a carrier.

I know from being in business and delivering products—I was delivering products in Winnipeg—they had to be there at the particular hour. If they are not, you have lost a contract. I see this as answering the concerns that were expressed by many Ontario trucking companies during the hearings.

Mr. Cousens: I sense a number of things that are coming out of it, and I accept your point as being a valid concern.

First of all, on the whole question about federal complicity with this, it has not been determined that it is ready. Is this something that should be put aside until you have that kind of agreement from the Department of Transport in Ottawa?

Ms. Kelch: They are two very separate things. We believe they can be done independently.

Mr. Cousens: Is there a precedent for this then?

Mr. McCombe: Part of the fitness test, among other things, requires a record of compliance with federal statutes. It is not unusual for the provincial government to require people who are operating under the Ontario law to also comply with the laws of other jurisdictions. This is one way of overcoming the problem that was raised in the public hearings. There was the perception that if somebody received a licence under the Truck Transportation Act, he would appear to ministry enforcement officers to be legal because their narrow view would be of provincial law, not federal law.

By requiring as a condition of the provincial licence that these two federal laws specifically be complied with, we are overcoming that problem and it is a way of dealing with the positioning move, which can be done with an American vehicle but which requires a Canadian driver. There is a perception that this is being flouted by American drivers doing intramoves.

This would clearly bring it within the jurisdiction of a provincial enforcement officer, whether or not we get a positive response from the federal ministers to enforce under their legislation as well.

Mr. Cousens: I am sympathetic to wanting to have it there. When this condition of an operating licence comes into effect, I want to know the discretionary powers that take place by the inspector when he suddenly says, "Hey, you have broken the Immigration Act," or the Customs Act. Quite candidly, when you and I cross the border, there have to be moments when we take a deep breath when we drive on.

Mr. Wildman: Particularly with your record.

Hon. Mr. Fulton: No, I take exception to that. You may have a guilty conscience, but I do not.

Mr. Cousens: I was just sort of trying to be the sinner with you. In that case, I have never had that feeling, and every time I have, I have been caught.

I am concerned about that. What will happen to them if they are found to be in contravention at that time?

Ms. Kelch: It would be like any other charge over which our enforcement officers have power as part of their responsibilities. They would go through the court process.

Mr. McCombe: If it is illegal, it is illegal.

Mr. Cousens: If I may just take it a step further, as to "and the regulations made thereunder," what do you really mean by that in your motion?

Ms. Kelch: As we indicated earlier, it is not the entire Customs Act and Immigration Act that are identified as being potential problems. It is the regulations related to incidental moves.

1550

Mr. Cousens: Can I ask how clear those regulations are to the industry as a whole?

Ms. Kelch: When the industry was in here speaking with us, they indicated they were confused at times, but perfectly aware of what their responsibilities are.

Mr. Cousens: Where were they confused? What would be the issues that caused that kind of confusion?

Ms. Kelch: I think there was some confusion in terms of whether you could operate illegally in Ontario, rather than just having the requirement to have a Canadian driver in the vehicle if you were operating on an incidental move.

Mr. Cousens: Is that the only one?

Ms. Kelch: It is the one that immediately comes to my mind.

Mr. Cousens: Was this in the previous legislation? Did we have anything like this?

Ms. Kelch: No.

Hon. Mr. Fulton: In the original Public Trucking Act? I do not think so.

Mr. Cousens: Do other provinces have a similar kind of thing now?

Hon. Mr. Fulton: I cannot answer that. Do you know, Mr. McCombe?

Mr. McCombe: Not to my knowledge. This is a response to input from the public hearings this committee has held. This item of incidental moves came up repeatedly. I think the minister, in his opening statement, mentioned that he had asked the federal ministers for consent to act on their behalf. Because there was such an ongoing concern, this is as much of a response to that as it is within provincial jurisdiction.

Mr. Wildman: As I understand it, this is in response to the concerns of the Ontario Trucking Association and individual truckers who appeared before our committee. They stated that they did not think the way the Customs Act and the Immigration Act were being enforced now was sufficient protection to prevent American firms using American drivers on within-province haulbacks. Is that right?

Ms. Kelch: That is correct.

Mr. Wildman: In a sense, what you are attempting to do in this amendment is to respond to that concern by naming the acts and indicating that every operating licence is dependent upon them complying with those acts.

Ms. Kelch: That is correct.

Mr. Wildman: In a sense, all you are doing is trying to make explicit what you argued was implicit before.

Ms. Kelch: It has always been explicit in the federal legislation.

Mr. Wildman: I mean in terms of the protections they were asking for from the province. When the truckers made presentations before us, the answer that came from the ministry inevitably was, "You are protected under the Customs Act and the Immigration Act already." You are just trying to put it explicitly into your act, to say that they are protected by those two federal laws.

Ms. Kelch: These individuals would now be subject to offences.

Mr. Wildman: I am glad you answered that, because that is what my question dealt with. I am trying to find out if this then amounts to double jeopardy.

Ms. Kelch: I do not understand your question.

Mr. Wildman: They can be prosecuted by the federal authorities for contravening these two pieces of legislation. You are now saying that they can also be penalized by the provincial authority for being in contravention of federal legislation. Is that not right?

Ms. Kelch: I am sorry. Could you repeat the last part of your comment?

Mr. Wildman: If they contravene either of these two federal laws or both of them, they can be prosecuted by the federal authority.

Ms. Kelch: That is correct.

Mr. Wildman: You are now also saying that they can be penalized by the provincial authorities if they are found to be in contravention of the two federal statutes.

Mr. McGuigan: What is wrong with that?

Mr. Wildman: I am just asking if that is the case. I am not a lawyer. I am asking, is that double jeopardy?

Ms. Kelch: I think the larger issue here is that the court probably would not convict for both, but if you were convicted under the federal implementation of the charge here, that would become part of your operating record in Ontario.

Mr. Wildman: I see; the commercial vehicle operator's registration.

Ms. Kelch: Yes.

Mr. Wildman: What penalty would be applicable if a provincial inspector found that an American firm, or a Canadian firm for that matter, operating in Ontario was using foreign drivers?

Ms. Kelch: Section 33 of the act indicates, "Every person who contravenes any of the provisions of this act...is guilty of an offence and on conviction, where a penalty for the contravention is not otherwise provided, is liable to a fine of not less than \$150 and not more than \$1,500."

Mr. Cousens: I have one more question that comes from the thoughts of Mr. Wildman. I am assuming you have no authority right now, under the provincial regulations, guidelines or anything, to do anything to any person who is in breach of the federal laws, that nothing is happening on it and you just have to look the other way.

Ms. Kelch: We do not have provincial authority currently.

Mr. Cousens: How would you deal with any breach of those acts right now?

Ms. Kelch: We submit complaints to the federal government.

Mr. Cousens: How long would it take, then, to have them—

Ms. Kelch: I do not know.

Mr. Cousens: Is there any feeling of just—

Ms. Kelch: I do not know. I have not done one recently. I am not that close to it.

Mr. Black: I am having some problem understanding this and I wonder if I can get clarification. These two amendments have been proposed by the

government in response to requests from Ontario truckers and their union representatives, the drivers.

Mr. Wildman: Not requests; concerns they brought up.

Mr. Black: Concerns expressed. So these are not really amendments the government wants per se, except in response to requests from Ontario drivers and Ontario firms. Is that correct?

Hon. Mr. Fulton: They are not in our original legislation. That is why they are being brought forward today.

Mr. Black: They are designed to protect people who reside and work in this province, to give them a measure of protection from drivers coming in from outside the province.

Hon. Mr. Fulton: And to give our people an opportunity to work in conjunction with the federal people.

Mr. Black: As long as we are clear on who we are providing protection to.

Mr. Chairman: Thank you for that clarification, Mr. Black.

Mr. Morin-Strom: One final point, which has to do with enforcement: We heard a lot of testimony about the lack of enforcement across the province of the rules and regulations governing the trucking industry and the threat that posed in terms of safety.

In order to be able to provide now for this kind of additional requirement in the law, and to assist our federal cousins in terms of monitoring the customs and immigration laws, what are we going to see in terms of additional enforcement and what is the commitment of this ministry going to be in that regard?

Hon. Mr. Fulton: That question was raised and addressed also during the proceedings. We indicated then and indicate again today that we have already added 32 highway inspectors in the past year, as we indicated some time ago, and it was certainly indicated during the hearing process.

Mr. Morin-Strom: I recall from the testimony earlier that our questions were not fully answered. In fact, we had received a commitment from the minister or his staff—I cannot remember which now—earlier in the hearings that we were going to get quite specific figures on the numbers of officers in the past and currently, and potentially in the future as well, in specific regions of the province. More specifically, there was a commitment made that we would get a report from the ministry on its commitment to enforcement in northern Ontario. I do not believe we received that.

Mr. Wildman: Also, Mr. Wiseman asked for the numbers in eastern Ontario, as I recall.

Ms. Kelch: May I address that? We did table that, at last Monday's meeting. There was a variety of commitments, as you indicate, that we made to the committee. If I am not mistaken, I think there were six or seven items we tabled that day. There was a report on the enforcement strategy and the staffing levels across the province tabled at that time.

Mr. Morin-Strom: I do not recall that there was specific mention of northern Ontario in it. I am going to have to look back at it. I did look through that information. Maybe I did not look at it page by page all the way through, but I could not find one that seemed to be that specific.

1600

Hon. Mr. Fulton: To the best of my knowledge, we have tabled on every single request the committee has made. If the specific information you wanted is not there and was in fact asked for—I do not recall it specifically—we will get it for you and for any other member who has a specific concern.

Mr. McGuigan: Could I point out that because of the geography, these trucks come in at major border points as they are serviced by major highways. The one I know in particular is a station on Highway 401 just outside of Windsor. It is probably the single largest source of American trucks through Detroit and Windsor. The truck station there has been enlarged to accommodate parked trucks and a larger staff. I think it cost about \$2 million. I remember this particularly because I participated in the opening of that station.

I guess the minister could tell us better what further plans there are. I know in general that other stations are slated to be similarly upgraded. It is all part of this act, that with these better stations there will be more enforcement and more capacity to enforce them. Again, from a very practical standpoint, I see that the biggest delay to a trucker is to have his truck tied up there. They can pay a fine and pass that back off on to the shippers, because that stuff has to be there. An alternative is to ship some of that stuff in by airplane. They do that. They will ship parts in by airplane at a fantastic cost. In the meantime, their truck could be tied up there three or four days. That is a real deterrent.

Mr. Chairman: Are there any questions specifically on the proposed amendments?

Mr. Morin-Strom: Just one other reminder: As I recall, the data we were to get was not just on numbers of staff increase, but also hours of operation of the inspection stations, particularly in northern and eastern Ontario.

Ms. Kelch: That is right.

Mr. Morin-Strom: Anyway, I will check that out.

Mr. Chairman: Okay. No other comments? All those in favour of the motion moved by Mr. Carrothers please indicate. Opposed? Carried.

Motion agreed to.

Mr. Carrothers: I appreciate the support.

Section 4, as amended, agreed to.

Mr. Cousens: Did we do subsection 15 at the same time?

Mr. Chairman: Yes. Was that not clear, Mr. Cousens?

Mr. Cousens: I thought we were just doing subsection 14.

Mr. Carrothers: It was moved as one motion.

Mr. Chairman: I would not want to entertain a prolonged debate on it. Is there a question you had on it, though, Mr. Cousens?

Mr. Cousens: No, I think that is okay.

Section 5:

Mr. Chairman: Any comments or questions on section 5? I have no amendments before me here.

Mr. Morin-Strom: Yes, I would like to get some clarification. In particular, I would like to section off subsection 5(1) so we vote on it separately.

Mr. Chairman: All right. We can deal with subsection 5(1) first then. Go ahead.

Mr. Morin-Strom: On subsection 5(1), we have heard some testimony in front of our committee of concern about the fact that operating licences and operating authorities will not be transferable under this bill. I refer in particular to the detailed brief we received from the Canadian Transport Lawyers' Association, which made a point on page 11 under 1(e) on transfers:

"Subsection 5(1) of the TTA provides that operating licences and operating authorities are not transferable. The effect of subsections 5(3) and (4) and section 32 is that transfers of shares and amalgamations which affect control of the operations of a corporate licensee result in the cancellation of the licence. TTA, by its silence, permits the transfers of licences indirectly by permitting the transfer of the shares of holding companies. It is suggested that, if the object of the TTA is to preclude in their entirety the direct and indirect transfers of operating licences, then the TTA should be amended to cover the transfers of the shares and the amalgamation of holding companies."

The point here is that this section states quite clearly that, presumably, the intent of the ministry is that operating licences and operating authorities are not to be transferable, and that will be the case for the majority of smaller operators particularly, but there are other loopholes in the bill that are going to allow the large operators that are operating through holding companies to be able to get around this provision.

I think we have a responsibility here to decide one way or the other whether we want to have transferability of licences and operating authorities or not and to change the bill, either to ban them totally and take the loopholes out or take this section out and provide that those small operators can transfer them within their own families, for example, which is being prohibited now.

Mr. Chairman: Is that a question?

Mr. Morin-Strom: Yes, I would like to ask which direction the minister thinks we should be going in and what in fact is the intent of this bill.

Hon. Mr. Fulton: I thought the intent was very clear. I am not quite

sure I understand the direction of your question. It says, "Where a licensee, who is an individual, dies...." I think then you have an obligation to do something about a licence. I am not really sure precisely what your question is.

Mr. Morin-Strom: My question is whether you want to ban the transfers of operating licences and authorities in all cases, in which case, why have you not addressed the loopholes that were identified to you by the transport lawyers' association, and on the other hand, if that is not your intention, why do you have this section in the bill?

Mr. McCombe: There is no transfer of a licence in the situation you posited. Both the TTA and the MVTA recognize the limitations that you might—take a multinational corporation with 100 subsidiary companies, one of which owns a trucking company in Ontario. To broaden this provision, the minister would be purporting to invalidate the change in control of a multinational corporation, perhaps through share transfer on the New York Stock Exchange or Hong Kong or whatever, because that multinational had one subsidiary, perhaps five levels down, which had an operating licence in Ontario.

Our feeling is that is not realistic. It would make the minister look a little bit foolish, trying to undo the change in control of the gentlemen adventurers out of Hudson's Bay in London, England, because somewhere they have a little organization here that has an operating licence.

Mr. Wildman: They are headquartered in Winnipeg now.

Mr. Morin-Strom: So the big operators that are publicly owned with share capital can effect transfers, but the little family operation will not be able to.

Mr. McCombe: It is not, in law, a transfer.

Mr. Cousens: What is it then?

Mr. McCombe: There is a change in control of some company up the line. The only reason for controlling them at all is to be able to take a look at who the controlling interests are that are operating the company, and that is happening at the immediate control level. It would be somewhat difficult to remove it five levels away.

Mr. Wildman: In effect, because of the complexity of dealing with multinationals, we do not touch them, but we get the little guy.

Mr. McCombe: The little guy has the same opportunity, if he wishes to take advantage of it. It costs about \$500 to incorporate that holding company. Unfortunately, he could make use of the same loophole. I mentioned a multinational; it may be a multi-Manitoba company with umpteen subsidiaries.

Mr. Wildman: It seems to me that what was put before this committee in testimony was that a small carrier sees his operating licence, his operating authorities, as a major asset. There was concern expressed about the fact that these had been carried on the books up till now and had been regarded by banks as a valid part of collateral if they were negotiating for capital, and that this would not be possible in the future.

As I understand it, the situation would be that fathers now would no

longer be able to pass along these authorities to sons or daughters who have grown up in the business. In other words, if someone holds an operating licence for the carriage of livestock and dies, his authority dies with him, and his son or his widow would have to apply for a new authority. Is that not correct?

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Mr. McCombe: Yes. They have six months in which to apply and section 8 permits a corporation as well, if it is an incorporated company, to apply for a temporary licence. That is one of the primary reasons for the specific provisions for the issuance of a temporary licence to overcome this sort of short-term problem while somebody is going through the process of applying for a replacement licence.

Mr. Wildman: Okay. In other words, in case of death, the executor has six months to apply and if he does not get the operating authority within six months, the licence is cancelled.

Now, if instead of using this case that I cite, the senior does not die, but rather wants to retire, am I not correct in understanding this section to mean that he cannot then transfer his operating authority to his son and that there is not the six-month provision as there is in the case of death?

Mr. McCombe: Are we assuming he is incorporated or not?

Mr. Wildman: I am assuming that I own a truck and I operate with an operating licence in my name.

Mr. McCombe: As an individual?

Mr. Wildman: Yes.

Mr. McCombe: You can sell the business, but not the licence. The individual, your son, would have to show that he is fit to operate that business under the laws of Ontario before he can have a licence to carry on the business with the assets he acquires from you as his father.

Mr. Wildman: To cut through all of that, I am correct, and he would have to apply for a new authority.

Mr. McCombe: Absolutely.

Mr. Wildman: Right.

Mr. McCombe: Whether he is under federal or provincial legislation.

Mr. Wildman: The option of transferring, while it could apply, with a six-month period to apply for authority in the case of death, does not even apply in that case at all in terms of retirement.

Mr. Dietsch: Supplementary to that.

Hon. Mr. Fulton: Six months is plenty of time to file the paperwork. I do not know where the real concern is.

Mr. Chairman: Perhaps a couple of supplementaries would help here.

Mr. Dietsch: To Mr. Wildman's question, I believe he was indicating, as I understood him, that it was an individual who just owned the business and was not incorporated. That was the answer given. What if the individual was incorporated? Would the answer be the same?

Mr. Wildman: In terms of retirement, no.

Mr. Dietsch: That is right.

Mr. McCombe: On a share transfer where control is changing, yes, the result is the same.

Mr. Chairman: Mr. Tatham, do you have a supplementary, because there is a list?

Mr. Tatham: Yes, a supplementary. I am a new boy on the block. I just want to know what the history has been if somebody in fact died or retired and the son wanted to take over. Was there any problem, or is it just as long as he is qualified, the licence comes through? Is that right?

Mr. McCombe: Under the present law, if the individual holds a licence in his own name, that licence would, I guess, vest in the executor. It would pass to his heirs as any other asset. I am afraid you are getting out of areas I generally deal with. I am not sure how the law has evolved. A share transfer today requires approval. I am not sure whether vesting of shares through a testamentary instrument has been considered a share transfer. I hesitate to give you a clear-cut answer because I am not that close to that.

Mr. Tatham: You mean the licence would be turned over without anybody checking on the individual who got it?

Mr. McCombe: Generally, a change in control of a licensee, if it is a corporation, requires approval of the minister, which involves a hearing by the Ontario Highway Transport Board to determine whether public necessity and convenience will be prejudiced by such a transfer.

Mr. Chairman: We are dealing with subsection 5(1). We are dealing with it only. It deals strictly with the transfer.

Mr. Black: I wonder if I can ask the intention of this clause.

Mr. Wildman: Excuse me, Mr. Chairman. I do not want to cut off Mr. Black, but I understood those to be supplementaries to my question.

Mr. Chairman: Yes, they were. I thought you had finished.

Mr. Wildman: I still have some more questions.

Mr. Chairman: Carry on. Sorry, Mr. Black.

Mr. Wildman: I want to follow this up. You talked about the incorporation. If this owner, on the advice of his solicitor, incorporated his small trucking business six months ago, when he dies, does his licence still not die with him?

Mr. McCombe: Yes. The beneficial control changes on his death, so I believe the answer would be yes.

Mr. Wildman: Even if he is incorporated, on his death his licence no longer is valid. If his heirs cannot continue his business, they would have to apply for a new licence even if the company has been operating in Ontario for 30 years.

Mr. McCombe: Fortunately, under the Truck Transportation Act, you will have the ability to apply for a temporary licence. There is no such provision in the Motor Vehicle Transport Act which simply says, period, no licence is transferable on death or under any other circumstances. That is the law of Canada with regard to every extraprovincial undertaking.

Mr. Wildman: Okay. But let's say hypothetically that a large US carrier is denied an operating licence for whatever reason. It may have failed the fitness test under the bill. It could then turn around and buy all the shares of a numbered company holding an authority in Ontario.

Mr. McCombe: But that licence would die on that transfer of control.

Mr. Wildman: Are you saying that if the American company purchases all the shares of an Ontario company which holds a licence with an open-goods authority in Ontario, it could not continue operating that business?

Mr. McCombe: That is why today such transactions under the MVTA require some care. These things do not generally happen overnight, without planning. One of the responsibilities of the lawyers involved is to make the actual transfer of ownership conditional upon going through the licensing requirements, and that is where section 8 with the temporaries can solve the conundrum they would otherwise have. Whether it is an American purchaser or a local has no impact on that.

Mr. Wildman: I always find it amusing or interesting when one gets into the intricacies of corporate law, but I really do not understand. As I said once before in these hearings, I decided not to go into law when I finished my undergraduate degree and I think it was the wisest choice I ever made.

Mr. Cousens: But then you went into politics.

Mr. Dietsch: And we are not sure about that decision.

Mr. Wildman: I am wondering. You mentioned earlier the subsidiaries and the difficulty of having an authority in Ontario which may be a minor part of the business and said we should not in any way harm the ability of shares to be transferred or companies to be bought and sold in a multinational situation, and yet we are prepared to treat Ontario owner-operators in a very different way. It just does not seem to me to be very fair. Maybe it is just that I have this penchant for being for the little guy, but it just does not seem to be fair that you would treat the little guy so much differently than you would treat the big guy.

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Mr. Chairman: Do not apologize for being for the little guy.

Mr. Wildman: No, I have always supported my chairman.

Mr. Chairman: Do you have anything else, Mr. Wildman?

Mr. Wildman: I have nothing else.

Mr. Black: I am missing something, I believe, or I am misunderstanding something, because I did not hear the same message my friends across the room seem to have heard. I understand this clause to deal with the transfer of licences. It does not matter whether it is a transfer of licences to individuals or to corporations, but that is prohibited. Am I correct? They are taking the interpretation that it is only prohibited for individuals. This is not a question of the big man or the little man; this is a question of the transfer of licences.

Mr. Wildman: It is a question of being incorporated as opposed to not incorporated.

Mr. Black: But the transfer of licences is not allowed for corporations any more than it is allowed for individuals.

Mr. Morin-Strom: But they do not have to be. They transfer the corporation, and that is allowed. If you want to pass it from one individual to another individual, you do it by transferring the corporation, and that is not possible—

Mr. Black: Mr. Chairman, I wonder if I can get that clarified by the solicitor rather than by the opposition members. I would like to hear what the legislation says, not what someone interprets it as saying.

Mr. Chairman: You want to hear it from the experts.

Mr. Black: I have a penchant for that, yes.

Mr. Wildman: Do you know what an expert is? It is someone who knows more and more about less and less.

Interjections.

Mr. McCombe: I believe Mr. Black's summary, as I understood it, was correct, as I understand the state of the law.

Mr. Black: I hope that is recorded in Hansard, because we can dispense with most of these frivolous questions and get on with dealing with the legislation, if that is correct.

Hon. Mr. Fulton: I am not calling it frivolous, but I think it is something that is very complicated that need not be complicated. First of all, as a former small businessman, I think anybody who would put a rig on the road in today's conditions and subject himself to that kind of public liability without being incorporated and enjoying the benefits and protections of being incorporated is questionable as a businessman, to start with. I say that having had some experience in that area.

Second of all, if your youngster inherits your car upon your death, which I hope is not soon—

Mr. Wildman: Thank you.

Hon. Mr. Fulton: —that youngster has to get a licence. It is that simple. I do not see anything complicated in what we are doing here. We want to ensure that everybody who is on the highways—and you people are

particularly concerned about safety—is properly fit to be there. It is that simple.

Mr. McGuigan: This provision would make a powerful incentive, in a father-and-son setup, for the father, whose name it is being operated in at the present time, to run a pretty good ship so that when it comes time for a transfer, the people who are making the decision of whether it is transferred to the son would have an idea of the type of operation the son might carry on, based upon his involvement in the business. It seems that all of us here, and the act, are very much concerned with safety, because the people who oppose this act make the claim that it is going to reduce safety. I think all of us agree that we want to do everything we can to improve safety. It strikes me that this provision is a powerful incentive for father and son to have a properly run business, one that does not have a bad record.

Mr. Cousens: It seems to me one of the things that comes through is that the minister is really saying no one is going to stand in the way of a qualified, capable person assuming the licence and the authority for the operation thereof, and that what you are then doing is ensuring there is compliance to regulations that meet all the terms and so on that are delineated further in section 6. That is what I assume you are saying.

Interjection.

Mr. Cousens: That being the case, what really ties it in together is that we have to have a lot of confidence in those fitness attributes that are part and party of it, so that will come in later. I can see that is going to be in place.

Hon. Mr. Fulton: At the pace we are making, it will be much later.

Mr. Cousens: I am sorry?

Hon. Mr. Fulton: I said that at the pace we are proceeding through the clause-by-clause, it will be much later.

Mr. Cousens: Oh, well.

Hon. Mr. Fulton: That is just an aside.

Mr. Chairman: To some, this is breakneck speed.

Mr. Cousens: I do not want to delay things at all. I am more satisfied now with what you are trying to say on that, so I will defer my comments to section 6.

Mr. Wildman: I want to point out once again the arguments that were put before the committee in the hearings. By saying now that a company cannot transfer the licence, then in effect the asset is now worthless. That is the purpose, but if that is the case, then it devalues the value of the business substantially, without any compensation. That is most unfortunate. While on occasion in this House, we in our party are accused of wanting to expropriate without compensation, I am very surprised a Liberal government would want to do that.

Mr. McGuigan: It seems to me that point is redundant as to section 5, because the fact that we are now allowing any fit person to have a licence

in itself means that a licence does not have a monetary value. That is established as part of the act.

Mr. Carrothers: I just want to comment on Mr. Wildman's last statement about devaluation. I am not really sure that is true in the sense that this has been on the books for a very long time. I suspect the goodwill associated with a licence in any trucking company in the province has been written down in accordance with accounting principles, which will have written it off by now. I do not think the passage of this legislation is going to change those values at this point. So I think the point you are making has already been taken into account.

Mr. Wildman: I understand what you are saying. The point was made, though, before the committee that there should have been some provision in the tax legislation to at least make compensation for the devalued asset.

Mr. Cousens: I take exception. I do not think this is the place for that. I think that would be quite another area of responsibility and something you could bring up then and be given a chance to vote against something.

Mr. Wildman: No, I would not present it. I am just putting forward their argument.

Mr. Cousens: I just want to ask one question. Can I assume this section of the bill is consistent with previous sections in earlier bills and there is nothing new here in section 5?

Mr. McCombe: It was in the original white paper tabled in December 1984 and has not changed since. The MVTA has in the meantime come along, been enacted and provides for no transfers. You will see in the Ontario Gazette this week applications for licences with a notation that this involves a transfer, so it is a share transfer and they are asking for a replacement licence. It is not the new service.

Mr. Cousens: And it is working right now.

Mr. Dietsch: Perhaps it might be appropriate—if I were a trucker and making an application for transfer, is that a stringent application in relationship to if I were a totally new individual coming in and starting up a business? Is there a difference between an application for a transfer and an application for new business in respect to trucking or are they both treated the same way?

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Mr. Wildman: There is no transfer.

Mr. McCombe: You are really looking at a fitness test, not public interest because it is going to be the same operation affecting the market in the same way, generally speaking. Regarding the fitness test, as we have heard, there are different opinions as to how stringent that is. But if anybody fails the fitness test, presumably they should not be taking over the operation of a trucking company.

Mr. Dietsch: But this is not handled any differently than many other businesses outside of trucking. Whether you are in the hotel business and you are going to transfer a licence, it is all relative to the businesses that you are in at the time.

Mr. Wildman: I do not want to belabour this.

Mr. Chairman: Is that okay with you, Mr. Dietsch?

Mr. Dietsch: Yes, that is fine.

Mr. Cousens: Mr. Dietsch raises a point. Could there ever be quotas that restrict the number of operating licences that would be there? I raise the question because that is really what you are getting into. If there are at some point, does it take away—

Interjection.

Mr. Cousens: I am sensitive to something you said here.

Mr. Chairman: Let Mr. Cousens build his case.

Mr. Cousens: If there are quotas of any kind, then you would want to be able to protect the person who is going to be taking over an existing licence for reasons beyond his control—family, the estate, or changes—

Mr. Dietsch: And this does not do that.

Mr. Cousens: And this does not do that. Is there a chance of quotas? Is that something that could come in and is there a time when maybe you want to make it easier for a transfer so there is some weight given to a person who already has a licence and then passes it on to the family—which touches on the point Mr. Wildman is really getting to—so that you do not lose that value?

Ms. Kelch: It is not the intent of this legislation to get into the process of quotas.

Mr. Cousens: I hear you and it is not implicit at all or in any other way. Is that something that has happened in other jurisdictions where there have been—

Ms. Kelch: Quotas?

Mr. Cousens: Yes, of operating licences. Then you start saying, "Hey, there are only so many who can get it."

Ms. Kelch: I guess what you are describing is the old system.

Mr. Carrothers: You can get a licence if you are fit, full stop. There is nothing to say there are so many out there.

Mr. Cousens: That is important.

Mr. McGuigan: It was in the past, but we are moving away from that.

Mr. Wildman: The problem is other people are not.

Mr. Cousens: Are not what? I guess it is just the worry that exists on that and I appreciate it when Mr. McGuigan says there may well be that concern out there within the marketplace.

Mr. Morin-Strom: I do not know if I am missing something here or whether the government plans to drop some major sections of this bill, but I

keep hearing Liberal members and members of the ministry staff say that all that is required is a fitness test in order to get a licence in this province after this bill is passed. I thought there were sections of the bill that had to do with public interest tests. Is there a contention that there will be no public interest tests henceforth?

Hon. Mr. Fulton: No.

Mr. Morin-Strom: So it is not that—

Mr. Chairman: I think Mr. McCombe is going to answer that.

Mr. McCombe: I think the member is referring to something I said. What I said was that where you have an existing company that will be carrying on but there is a necessity for the new owners to acquire a replacement licence, we are looking at different individuals and fitnesses involved.

The marketplace is not likely to be affected, therefore public interest tests are not likely to be a big consideration where there is a change in ownership. It is possible, if the new owners have mammoth resources, that the nature of the business may be seen to change and a public interest test will be involved. I did not mean to suggest the public interest test process is not there. But if you are talking about the father-son operation, the transfer of that, it is hard to conceive of how a public interest test could come about because Junior is now going to run the business, which probably he has been largely running because Dad is getting older, anyway.

Mr. Morin-Strom: That is in the case of a family business, but in the case of a big, corporate business which is not going to be restricted, other than in this little section 23, it is going to have to report that it has a change in ownership or change of shares of its capital stock. But for them, if the transfer goes from a small operation to some big yellow freight line, they will then potentially, it is hoped, according to this legislation, be subject to a public interest test.

Ms. Kelch: Everyone is potentially subject to a public interest test.

Mr. Morin-Strom: They would be if they had to reapply for the licence, but in fact they will not be subject to a public interest test here where they have just changed the ownership.

Mr. McCombe: If you look at section 32, which ties into section 5, you will find, under those circumstances, the licence they acquired disappeared on the change of ownership. So unless they come to apply for a new licence and go through fitness and public interest, if that is called for, they will not be licensed to carry on any trucking business.

Mr. McGuigan: In the event of, say, a huge multinational company applying for and winning a licence, then ceasing to operate—because, for example, it decides to sell the company—the new owner is still going to be restricted by the terms of that licence. I assume it is not a carte blanche licence which enables them to bring in another thousand trucks and run them willy-nilly throughout Ontario. I believe they would still be restricted to that licence. Am I correct?

Mr. McCombe: There will be an application for a new licence. It is up to the applicant to decide whether he will ask for a licence that is identical to the terms of the old licence or whether he is going to ask for an

expanded one. If he asks for an expanded one, he runs a greater risk of being involved in public interest hearings and so on. Or he might, conceivably, ask for a licence that drops some of the privileges which the predecessor had which he is not interested in serving. So he shapes the application as he sees fit and takes the consequences.

Mr. McGuigan: If he does ask for an expanded one, he does run into the public interest test.

Mr. Carrothers: Yes.

Mr. Wildman: That means, of course, that for the first five years anyway, another operator could object to the issuing of an operating authority to the son in the scenario we were talking about.

Mr. McCombe: He can apply for a public interest hearing. He has to put forward a prima facie case to the board to substantiate his request before a hearing will be called.

Mr. Wildman: So it is not as easy as it was made out to be, at least for the first five years. It was suggested that an individual would almost automatically get a licence as long as that individual could show that he was fit to operate. It is not quite that automatic.

Mr. Cousens: It is not automatic. I think that is the point. I think Mr. Wildman is making a point. Do you want it automatic? I think you would really have trouble. You are not suggesting an amendment?

Mr. Wildman: No, I am not. I just want to vote against this.

Mr. Carrothers: Did I hear somebody say he wanted to vote?

Mr. Wildman: I was not calling for closure, but I am quite willing to vote. I was willing to vote earlier.

Mr. Cousens: I sense from legal counsel and the minister that there has really been no objection at all to this in the past. Even though the point has been brought out by the New Democratic Party that there are opportunities for transfers, it is only those who have really thought it through who can achieve that.

Mr. Wildman: Only if they are incorporated.

Mr. McCombe: I remember two areas of concern that were raised before the committee. One was by father-and-son operations, and we pointed out that there is the provision, in the event of death, for an automatic six-month extension; in any event, the ability to apply for a temporary licence pending receipt of a permanent one.

The other aspect which was raised by the transportation lawyers was that we do not purport to catch holding companies up the line. Our response to that is that we do not believe it is practical to try to cover that off. In theory, it is nice, but I would suggest that in many instances it is impractical and it creates a loophole. It is a loophole, but the father and son, if they are really worried about this, can take advantage of it as well. There is some equality for the little man and the big man.

Mr. Wildman: Equality of loopholes.

Mr. Cousens: Can I ask, has there been any other way of addressing this? I can see why you are doing it and I see why there is a necessity for a review of the licence at a critical point in time, but were there any other ways in which you could have come forward with addressing this concern?

Mr. McCombe: No. In fact, we have allowed for a number of concerns which the federal government has failed to do.

Mr. Carrothers: It is a new and improved version.

Mr. Morin-Strom: In the absence of improvements to the obvious loopholes that have been created here, I think we have to vote against this subsection.

Mr. Chairman: Are there any other comments or questions on subsection 5(1)? We are dealing only with subsection 5(1) at this point. All those in favour of subsection 5(1) as it is in the bill, please indicate. All those opposed? Carried.

Mr. Wildman: The majority keeps on trucking.

Mr. Chairman: Any other comments or questions on subsections 5(2) through 5(5)? Mr. Morin-Strom, which subsection?

Mr. Morin-Strom: I would look now at subsection 5(3).

Mr. Chairman: Subsection 5(3). Nothing on subsection 5(2)? Shall subsection 5(2) carry as in the bill? Carried.

Okay. Subsection 5(3), Mr. Morin-Strom.

Mr. Morin-Strom: This is where the loophole gets created for the corporate sector. It seems to me that if in fact the intent of the bill, as it has been voted on by the majority of this committee, was to disallow transfers of operating licence authorities, why are we only requiring corporate licences to have to simply report the issue or transfer of shares with capital stock or changes in beneficial ownership thereof, and simply report amalgamations that may affect the whole of their operation? If the intent, as we have just voted in subsection 5(1), is to stop the transfer, I think we have to do something about this particular section.

Mr. Chairman: I do not want to restrict debate, but I think that was dealt with in the previous debate.

Mr. Cousens: No, it was not.

Interjection: You have a point there.

Mr. Chairman: All right. Perhaps you wanted clarification.

Mr. McCombe: I am afraid I do not understand the question.

Mr. Morin-Strom: My question is, how can we put a control on the transfer of corporate ownerships and amalgamations that will ensure that the corporate truckers do not have a right to transfer that the individual trucker does not have?

Mr. McGuigan: Look at section 32.

Mr. Carrothers: Look at section 32.

Mr. McCombe: I am afraid I would have to ask you to help me by showing me where they gain this right of transfer. On there being a report under subsection 5(3), section 32, I believe, kicks in.

Mr. Morin-Strom: Yes.

Mr. McCombe: If there has been a change of control, the licence has died.

Mr. Chairman: Transfer of shares is not—

Mr. Morin-Strom: I see. So you are saying every time there is a change in control, if Canadian Pacific, which I believe is still the majority owner of CP Trucks, sells that interest to another company, its licence authority dies?

Mr. McCombe: That is right.

Mr. Morin-Strom: Then a new licence has to be applied for?

Mr. McCombe: That is right. I imagine that is happening today with companies such as CP, because they are under the Motor Vehicle Transport Act and there is absolutely no provision for transfer under the MVTA.

Mr. Morin-Strom: What do they do in the interim when they are sitting there with no licence and thousands of trucks?

Mr. McCombe: One, they sue their lawyers for not having advised them of the ramifications to their doing this. Two, they would apply for a temporary licence. At the moment, temporary licences are being issued as they have been, but without any provision in the Public Commercial Vehicles Act that you can point at as giving that authority. Section 8, for the first time, will make it clear that can happen to deal with those situations.

Mr. Morin-Strom: So when, suddenly, there is a takeover and CP just sells CP Trucks to another interest, the licence that CP Trucks was operating under dies. When that happens on a given day, you are going to issue a temporary licence that same day so that they can continue to operate the thousands of trucks they have in the province. Under what authority are you going to issue them that temporary licence?

Mr. McCombe: Section 8.

Mr. Cousens: Is that repeatable on section 8? Therefore, they could keep getting 12-month extensions?

Mr. McCombe: There has to be an application for a permanent licence at the same time. When that application for the permanent licence is dealt with, the temporary will die. It will either become redundant or they will lose the temporary because they are turned down on the permanent.

Mr. McGuigan: Is there not a concern with the operating groups? I could see what the member is at if there were some clandestine criminal organization that decided it wanted to exchange shares with the owners of a

trucking company, one would be concerned; but the concern that we have in Ontario for the safety is with the operating company. If, suddenly, the policies of that operating company changed, we have the authority to jump in immediately. If they have a bad accident rate, start breaking the laws and so on, we stop the operating company. The operator part of this act is controlling the operating company. In addition to that, we have section 32.

I just want to bring members' minds back to the fact that it is the operating company that is going to have those trucks out on the highway. Those are the people, if we pass this bill, with all the strength of it, we are going to have—I do not want to use the word "absolute," but in total, we have a lot of control.

Mr. Tatham: Have you ever turned anybody down of a corporate nature?

Mr. McCombe: Is that on a transfer at the moment?

Mr. Tatham: Yes.

Mr. McCombe: I am afraid I cannot answer from my personal experience because these hearings are before the Ontario Highway Transport Board, which reports to the minister, and I am not directly in that flow, as it were.

Ms. Kelch: I do not remember. In the year and a half I have been there, I have—

Mr. Tatham: No one has ever been turned down.

Mr. Cousens: That is a good question. Could we get that information that Mr. Tatham has asked about?

Ms. Kelch: Sure.

Mr. Chairman: Okay. Mr. Morin-Strom, are you finished?

Mr. Morin-Strom: I am done on subsection 5(3).

Mr. Cousens: There are two things I want to ask. Does "forthwith" means within a two-week period of time or something like that? Is that what you are talking about? Is that what I am hearing when you say forthwith, so that there is not an extensive delay? What is the meaning of that legally? I am not a lawyer.

Mr. McCombe: I cannot cite cases as to how they have been interpreted. In terms of the import of that, if they have not seen fit to advise us prior to the proposed transfer, they are going to be in trouble. If they are reporting after the fact and there has been a change in control, it is a little bit late, because the licence died at the time of the change of control, not at the time of the reporting or subsequently.

1650

Mr. Cousens: I think that could be a problem. I think you said it very well a moment ago, that a lawyer, or whoever was responsible to see that these matters are looked after, is the one who is going to get his shirt in a knot. What are the systems within the ministry? Maybe the minister could answer this question.

Mr. Chairman: Sorry, Mr. Cousens. I think legislative counsel wanted to make a contribution.

Mr. Yurkow: I just wanted to say "forthwith" has been interpreted as meaning within a time reasonable in the circumstances.

Mr. Cousens: Is that right?

Mr. Yurkow: It is not quite as soon necessarily as the word would seem to imply, but a court looking at it could decide, on a two-week delay, that there were circumstances which warranted that delay.

Mr. Cousens: Would the ministry be wise in your view to be more specific on the time frame in which it wants to receive this kind of information?

Mr. Yurkow: That is a judgement call. What this would be implying is that you do it very quickly, but if there is a long weekend or whatever and you wait until the end of the long weekend, it is not quite forthwith, but a court will say that is reasonable in the circumstances. If the transfer took place Friday afternoon and you reported it Monday, that would be reasonable. There is no point reporting it on the Saturday; there is no one there to receive it.

Mr. Cousens: You do it Monday morning after coffee. Does the ministry have systems in place to handle the extensive amount of information which is going to be coming in with regard to the changes coming around on licences? If so, what are they?

Mr. Black: Are we doing estimates, Mr. Chairman?

Mr. Chairman: No. This has to do with the transfer of shares.

Mr. Cousens: What numbers are you talking about? You would be talking about rather large numbers with the number of licences we have in Ontario. Do you have computerized systems in place which could monitor and maintain status on the ongoing flux we are talking about?

Ms. Kelch: We have this requirement in the current legislation, so the systems are in place.

Mr. McCombe: The only change is that the licence is not transferable. Otherwise, it is the status quo. It must be reported to us and today the board must determine whether it is desirable that there be a transfer, but as soon as there is a change in control, we are involved today and have been for many years.

Mr. Cousens: Could I get the statistics on how many have not been renewed when they have come along and asked for it?

Ms. Kelch: You asked for that earlier and we agreed.

Mr. Cousens: Yes. How soon will it be?

Ms. Kelch: I do not know. I would have to check and see how many there are.

Mr. Miller: Forthwith. Sunday after church.

Mr. Chairman: Are there any other comments on subsection 5(3)? Shall subsection 5(3) as in the bill carry? Carried.

Mr. Chairman: Are there any comments on subsection 5(4)?

Mr. Morin-Strom: I have some concerns about lack of definitions in this section, in particular, what the words mean. You talk about "any part of the transportation service." First, let's just deal with that. What do you mean when you talk about "any part of the transportation service"? That seems to be really broad-based.

Mr. Cousens: That just covers it all.

Mr. Morin-Strom: That may mean they have to report all kinds of things. Does it mean that if they have a new manager running one of their district outlets they have to report that?

Mr. McCombe: No, because that would still be controlled by the licensee. What this is aimed at is franchising of licences; that is, part of a licensee's authority maybe to carry goods from A to B. He purports under a management agreement or some such document to allow some other operator who does not have a licence to operate under his licence; part of his operation is in fact farmed out to somebody else, controlled by that other person and that violates the total purpose of the act in terms of having some degree of control on who is providing a service to the public.

Mr. Morin-Strom: Do we have a definition of "control" in the bill? I do not see one.

Mr. Carrothers: Karl, get serious.

Mr. Morin-Strom: What does "control" mean? Does it mean ownership only?

Mr. Cousens: Someone who is operating a vehicle, I suppose.

Mr. Morin-Strom: This is not talking about control of the whole business. You here have opened it up to control of any part of the business, and to me that may mean control of a department or a segment or one regional outlet, let's say, which the business is being run from. This would then require the reporting of that change of who is in control of that particular part of the business.

Mr. Chairman: Where it states "any part of the transportation service authorized is controlled," would that "authorized" not mean licensed? It would have to be licensed rather than just another department within the organization, would it not?

Mr. Morin-Strom: If your licence, let's say, allows you to carry goods between Metropolitan Toronto, Windsor, Sudbury, Sault Ste. Marie and Thunder Bay, that licence allows the operations of carrying goods between those centres. If, let's say, you have one northern operation in Sault Ste. Marie, your head office is in Toronto and you have another outlet with trucks stationed in Windsor, to me this implies that whoever is in charge of a portion of the transportation service—in charge of, let's say, your northern operation—if that person changes, that would have to be reported under this section.

Mr. McCombe: I would not so interpret it.

Mr. Morin-Strom: Then give me an example of what "part of the transportation service" means as opposed to the whole thing.

Mr. McCombe: It means a part. We have clearly used "controlled." By saying "controlled in any way," it is meant to be very broad, as a method of filling the odd loophole, which we do our best to do. If the person operating that part of the transportation service is not himself under the control of the licensee, then there has been a change. But if you are talking about, say, a terminal operator who is the licensee's employee, it is being carried on under the licensee's control. He obviously uses employees for the purpose; it is delegated. But if the operation is turned over to someone who is not under his direction and control so that the business has moved out of the control of those who have been found fit, authorized, etc., then it offends this section of the act.

Mr. Cousens: Who have not been or who have been?

Mr. McCombe: Who have not been approved under the procedures of the act. There have been many cases in the past of so-called management agreements by which those who could not obtain licences under the current law have tried to operate under someone else's licence. This is an attempt to block that loophole.

Mr. Morin-Strom: So you are saying that if the guy who is managing that northern operation is an employee of the firm and is paid a salary or a wage, he does not have control and so that is not a problem?

Mr. McCombe: He does not effect control in these terms.

Mr. Morin-Strom: What if he is working on a contract, though, that includes some kind of incentive on a commission basis up there?

Mr. McCombe: That does not change the situation.

1700

Mr. Morin-Strom: Perhaps you could tell me what the purpose of this section is.

Mr. McGuigan: Subcontractors would use it.

Interjection: Yes, I think subcontractors—

Mr. Cousens: Subcontracting: When you have a company and you do not have enough to handle the trips you have booked and you have been a little bit more successful in your sales to the company you are serving, then you suddenly work out something with one of your competitors to do some.

Mr. McCombe: Yes. That would be a good example of what offends this provision and offends the purposes of the act.

Mr. Cousens: If a licensee came and said, "I have worked out this in order to handle this transaction," are you then indicating that the registrar would not allow it?

Mr. McCombe: Yes. This should be less of a problem under the Truck Transportation Act because there will be less difficulty in becoming licensed.

It has been a practice in the past; when somebody knew that under public necessity and convenience he would not get a licence, he would try the franchising route. That is much less likely to operate in the new environment, but there still is an attempt under section 5 to restrict people as much as possible to those who are approved through the fitness test and public interest test, if that is appropriate.

Mr. Cousens: If Mr. Morin-Strom does not mind—

Mr. Morin-Strom: I would like to come back.

Mr. Cousens: Yes, so would I.

Mr. Carrothers: I guess, just in reference to the section, I want to make a comment similar to the one I made yesterday about drafting legislation. I certainly agree with Mr. Morin-Strom that you want to be as precise as you can. On the other hand, you want also to make sure that your legislation takes into account the extreme creativity of some of my colleagues in the legal profession, and you do not want to find yourself not able to deal with certain new arrangements such as the leasing of which Mr. Morin-Strom may not be aware.

Many trucking operations have been operating under leased licences. Maybe they would lease a licence from someone and off they would go. It was never clear whether that was legal or illegal. You could see opinions this long saying it was legal and, of course, opinions this long saying it was illegal, but it was never clear. This would be addressing that.

You have to be a little less precise than you might want to be in order to allow yourself to deal with new, unforeseen things and make this legislation applicable in the future. I think that having something like this is essential to making the first three sections of this section operate appropriately.

Mr. Tatham: Would this not stop a monopoly—if somebody wanted to make a deal, and you could pretty well organize your prices—if you did not know whom you were dealing with?

Mr. McCombe: The entire purpose of the act is to get away from monopolies or restricted competition.

Mr. Tatham: Right. I think, years ago, there used to be in a section 8 in the Royal Canadian Air Force—"prejudicial to good order." They always had one section they threw everything at. If they could not catch you on anything else, they caught you there.

Mr. McCombe: The basket clause.

Mr. Tatham: Right.

Mr. Black: This is almost a supplementary; I would like to follow up on the comment about the purposes of this act. Are there sections of this legislation which will enhance safety on our highways?

Mr. McCombe: Safety is dealt with essentially in the Highway Traffic Act because safety is in terms of commercial motor vehicles which may or may not be for-hire vehicles; they may or may not be exempt moves under this legislation. So safety is not unique in any way to a for-hire, regulated, TTA-type operation. Bill 86, which was passed recently, was almost exclusively

devoted to improving our controls over safety of commercial motor vehicles whether for hire or not for hire.

Mr. McGuigan: Supplemental to that, if there were a company which because of its bad safety record lost its licence, it would still have its trucks, management and force. It would then go to some other trucker and say, "I want to operate in contract to you under the authority of your licence." I do not know whether that was possible in the past or not, but certainly under this it would not be possible. It would address the question that my colleague brought up, which is in that instance that it is a safety measure.

Mr. McCombe: You are quite right. That would reinforce the commercial vehicle operator's registration, which is under the Highway Traffic Act; it would also restrict the person from operating vehicles or remove entirely his right to operate vehicles whether or not it is a for-hire operation.

Mr. Black: Section 16, which deals with certificates of competency, would, I suppose, relate directly to safety on the highways as well, would it not?

Ms. Kelch: Yes, Mr. Black, it does.

Mr. Black: I guess my point is that it seems rather an indirect way of getting at it; but I think it is vital that we give this legislation very careful clause-by-clause analysis. On the other hand, we would not want to delay in any way the passing of legislation that may impinge very significantly on the safety of the people who drive on the highways of Ontario. None of us would want to be held responsible for doing that or for doing anything which would cause deaths on our highways.

I would urge that all members of the committee make every effort to move this legislation ahead quickly.

Mr. Morin-Strom: Why? What is the rationale for that?

Mr. Black: I would not want to think that any member of this committee or any party in this House would want to be identified as having been even an indirect cause of more highway deaths than we already have, so I would like to move ahead. Do I make my point, Mr. Chairman?

Mr. Chairman: It is important that you say that, Mr. Black, because I think this section is just about to pass. Mr. Cousens is next.

Mr. Carrothers: That is one of the most thoughtful comments I have heard here. Thank you, Mr. Black.

Mr. Cousens: What are the circumstances under which the registrar would not permit the ongoing special arrangement? You are leaving a great deal of privilege in his hands. Could I get a clear idea of what they are? What are the circumstances under which you would not allow that registration to go to one of the franchises? I would like to deal with the one where—and I am not going to mention the company name—I know that—

Interjection.

Mr. Cousens: I know for a fact that they have got business that causes them to sub out a certain amount to another company to sort of handle

their overcapacity in certain stages. Therefore, they would have to review that with you; and you at that point could say, "No way." Am I correct? I want to know when it is you would say, "Yes, you can," and when you would say "No, you can't."

Ms. Kelch: They will have the opportunity of coming forward, I guess, if they can prove that this is a legitimate part of their operation to make legitimate what they are doing.

Mr. Cousens: Is there any written guideline that you use to determine what is legitimate or illegitimate?

Ms. Kelch: No.

Mr. Cousens: Should there be?

Ms. Kelch: I think Mr. McCombe has tried to explain, and I think Mr. Carrothers has corroborated, that we need to be flexible because there are so many possible kinds of arrangements that we are talking about here.

Mr. Cousens: Is there any challenge that a person can have to your ruling?

Mr. McCombe: Yes; it would be subject to judicial review. I think the point is that the type of operation that you probably have in mind cannot become legitimate today by getting a licence from the board.

Mr. Cousens: I know that.

Interjection.

Mr. Cousens: No. I happened to be aware. I wanted to see how it was going to be handled. I can go back and say I did them a favour.

Mr. McCombe: One of the purposes of this act is to permit those people, assuming that they can operate vehicles safely, to come forward under this act and get an operating licence to permit them, perfectly legally, to do what they are doing now without having to go through various subterfuges of trying to give it a gloss of legality.

Mr. Cousens: I would like to ask the question of the minister. Minister, would you be prepared to undertake to prepare criteria and guidelines for the registrar to work within in either approving or disapproving of such arrangements that might be brought to her attention?

1710

Ms. Kelch: Section 32 of the bill, Mr. Cousens, indicates that for both subsections 5(3) and 5(4) we are addressing right now, I do refer this report or the information I have received to the Ontario Highway Transport Board, so that board does have the opportunity to evaluate and investigate, and then report back.

Mr. Cousens: What we are dealing with then is precedent and how the board is able to deal with specific instances as you have been brought forward, so you are going to have a history of yeses and a history of noes after a period of time. People will work from what actually happens before the board, rather than knowing beforehand that there are certain specific

prerequisites you are looking for in order to say, "Yes, you can have this," or "No, you cannot have this." Common sense cannot be legislated; I am not asking for that. I am asking for some definition of those opportunities where people will be able to have that subbing out or certain other arrangements.

Ms. Kelch: The minister does have on a number of occasions the ability to offer guidelines to his board. I guess if he felt it was valuable in this area to be a little more precise, then he could do so.

Hon. Mr. Fulton: To answer your question, I would give the undertaking to pursue that with the appropriate staff to see whether it is advisable to come up with a list of guidelines or not.

Mr. Cousens: I take comfort in that. That begins to touch on the kind of worry people have, because there are some who really are very careful in obeying the law and the intent of the law, but they are not going to know on this one. In fact, some of them might be afraid of reporting them because they will not know what is right or wrong at this point. That can be a very very helpful thing for individual companies or truckers, or other people involved. If you were to undertake to do that, is there any kind of time frame in which you would deal with that, assuming this gets passed today? Maybe it will not.

Hon. Mr. Fulton: In whole or in part?

Mr. Cousens: Just give me a sense of when you could see that done.

Hon. Mr. Fulton: Right off the top of my head, Mr. Cousens, I could not give you a specific answer, but I do not want to you worry or lose any more hair.

Mr. Cousens: I do not think I can lose much more of the latter. What is the penalty for someone who does not convey to the registrar any kind of arrangement that he has? Another question is, what methods does the ministry have to police what is going on and is there any whole process that surrounds this action?

Ms. Kelch: I guess on the penalty question, Mr. Cousens, it is the same as the answer I gave to Mr. Wildman earlier, which is section 33. It indicates a range of potential fines, from \$150 to \$1,500. In terms of the process we use vis-à-vis the enforcement of not only this but a variety of other aspects of this legislation, Mr. Black asked earlier what kind of enforcement strategies we have in place, whether this was a safety bill. As part of the earlier bill to which the minister referred, we did increase our enforcement staff by 32 individuals. Those individuals are specifically going to be trained in what we are calling facility audit, and that in fact allows those officials to go into a trucking establishment and do a paper investigation. We would be looking for things like this.

Mr. Cousens: I come back to my first point. I think you are following up on the section as it should be, and there is all the more reason then for clearly defined guidelines under which the board and the ministry will be operating. Is there any chance that I could get a description of the registrar's job per se? Could someone make that available?

Mr. Dietsch: Are you interested?

Mr. Cousens: I am interested in—it is probably not an elective position for Conservatives.

Mr. Cousens: I would be interested in knowing. Does someone have that handy at all?

Ms. Kelch: A job description?

Mr. Cousens: Yes.

Ms. Kelch: I did not bring it with me.

Mr. Cousens: You do not have it in your purse?

Ms. Kelch: No.

Mr. Cousens: I would appreciate getting that if I could.

Hon. Mr. Fulton: The registrar's job description?

Mr. Cousens: Yes, and the guidelines under which the registrar operates and the reporting structure. I would like to see that.

The Acting Chairman (Mr. McGuigan): Are there any further comments?

Hon. Mr. Fulton: Yes. I must ask why, Mr. Cousens?

Mr. Cousens: Because you have such an important role to play in the fulfilment of this bill that it is therefore important that this job is consistent with the intent of the bill. Has it been revised accordingly? Is it going to be revised accordingly?

Mr. Dietsch: And when will it be?

Hon. Mr. Fulton: If you want to move passage of the bill, as presented, we could probably get that for you very quickly.

The Acting Chairman: Are you finished, Mr. Cousens?

Mr. Cousens: For the moment.

Hon. Mr. Fulton: I was going to say something, but I will not because the light is on.

The Acting Chairman: The regular chairman is always saying, "Do not tease the bears."

Hon. Mr. Fulton: I was just remembering what he said to me yesterday.

Mr. Morin-Strom: I did not get to finish the first point. I did not get the case of what this was aimed at. I gave you a scenario where we have this northern operation and you say it would not apply to the manager up there. The one case you have identified, where the suboperations would have to be licensed or at least have to report and potentially be licensed as well, is franchisees. Is that one of your main concerns for having this section?

Mr. McCombe: That is one way in which they are described. I believe Mr. Carrothers also gave a summary of the situation.

Mr. Morin-Strom: Okay. So the idea is that in a franchise-type operation, the change in ownership of individual franchises would have to be reported.

Mr. McCombe: If someone who is avoiding obtaining a licence on his own by purporting to operate under the cover of somebody else's licence, but being an independent operator, independent contractor if you will, not under the control of the licensee but operating under his own control.

Mr. Morin-Strom: I go back to one of the testimonies we received. In terms of very big operations worldwide and certainly in Ontario, United Parcel Service has a rather unique corporate structure where, as I understood its testimony, it operates as individual owner-operators having control over their own individual operation.

The way I would read this then, am I correct in saying that what they would have to do is not only have, potentially, a licence for UPS as a whole but also their individual owner-operator in each community that effectively has the franchise for that community would have to be licensed as well, and we would have to have the reporting of changes in control of those individual operations?

Mr. McCombe: No. I did not take that at all from the evidence.

Mr. Morin-Strom: Was that not an example of what this is all about?

Mr. McCombe: No.

Mr. Morin-Strom: Why not?

Mr. McCombe: The testimony, as I remember it, was that their managers are shareholders of the company, of the licensee. There is one licensee, one corporation. Its shareholders are also employees—managers.

Mr. Morin-Strom: But they run their own individual, effectively franchises, do they not?

Mr. McCombe: Not to my knowledge.

Mr. Morin-Strom: Because of the inadequacy of the definition here, do you see that you could have a big court case on whether UPS has to individually licence and comply with this section?

Mr. McCombe: No.

Mr. Morin-Strom: I would just suggest that could very well be the case on this particular one. That is the kind of example why there should be greater clarity in the definition of what part of a transportation service is.

Mr. McCombe: I cannot agree with that analysis. It is one man's opinion.

Mr. Morin-Strom: Thank you.

1720

Mr. Cousens: Just on the commitment that has been made by the minister with regard to the guidelines that are going to be defined pertaining to section 4, could he make the commitment as well that they would be circulated to representatives of the Ontario Trucking Association once they have been done? In that way, the word will get out. Could I ask for that?

Hon. Mr. Fulton: It has been my experience that the OTA has always got the information it has sought from this committee and from this ministry and the board.

Mr. Cousens: I am such a new person on the committee and so naïve as to how things go on. I really thought it would be worth while asking and, in that way, I assumed—

Hon. Mr. Fulton: It was certainly worth while asking.

Mr. Cousens: —from my friend, the minister, that would be the case.

Mr. McCombe: I believe, Mr. Cousens, there may be a problem because it strikes me that under section 32 the guidelines have to come from the board, not from the registrar.

Mr. Cousens: I really think there is an issue here, and that is that we want to know, even if the reports are going to come from the board to the minister. That really has been the source of a number of our earlier amendments that had to do with who has authority over this whole matter. But assuming I do not have any influence on who is going to, the fact the minister will want to make sure such defined guidelines are prepared, then it is something that either through the registrar or the board would be tabled for public dissemination as to just how decisions are being made and who would be impacted positively or negatively, and under what circumstances. That is really what I am asking for. So the minister, either through the registrar or the board, would be able to obtain that.

Hon. Mr. Fulton: Yes. Well, okay.

Mr. Cousens: The minister is having second thoughts.

Hon. Mr. Fulton: No. I said to you I would take that under advisement and so on, and that is what we will do.

Mr. Cousens: Then what is the point that legal—

Mr. McCombe: If it is the board that is the appropriate body to produce the guidelines. I would respectfully suggest that even the minister does not have the authority to tell the board to produce guidelines. He could influence them, hopefully, to produce something that would be useful to this committee, but it is an independent body.

Hon. Mr. Fulton: If you check Hansard, my previous answer, Mr. Cousens, I said I would take under advisement your request and discuss it with my—

Mr. Cousens: I do not need to check Hansard in the sense that I thought I heard one thing. I am now worried. I am not worried about you. Your word is good, but I am concerned that you maybe do not have the authority to get what I am asking for through the board, and that is what counsel is saying. The board might not be prepared to prepare it for the minister. If the minister were to happen to ask them for it, they might not be inclined to deliver the same.

Mr. McCombe: Hypothetically. This is not an area completely without precedent because we do prosecute people who carry on this type of activity, and sometimes they are convicted and sometimes they are not. We do have

precedents of court decisions that lay down a fair number of the ground rules as to who would or would not be offending this section. I suggest it is not something brand-new.

Mr. Cousens: I know that. I quite realize that. I just want to have as much in black and white or red and blue or whatever colours you put it in, so that we do know. That is my concern. I guess, to me, just the assurance of the minister is sufficient to know that we will receive the same and that it will be circulated to the OTA.

Mr. Chairman: Are there any other comments on subsection 5(4)? If not, does subsection 5(4) carry as in the bill?

Mr. Cousens: No; a recorded vote.

The committee divided on whether subsection 5(4) should stand as part of the bill, which was agreed to on the following vote:

Ayes

Carrothers, McGuigan, Miller, Roberts, Tatham.

Nays

Cousens, Morin-Strom.

Ayes 5; nays 2.

Mr. Chairman: Subsection 5(4) is carried. Are there any comments or questions on subsection 5(5)?

Mr. Morin-Strom: What is the point of it?

Mr. Chairman: Sorry. Is that a question?

Mr. Morin-Strom: Yes, that is a question.

Mr. Chairman: I did not hear it.

Mr. Carrothers: The point seems fairly evident, Mr. Morin-Strom.

Mr. Cousens: He is not a lawyer.

Mr. Morin-Strom: Could I get a brief summary of what the point of it is? It is obviously giving an exclusion. In certain cases, the report is not required under the section we have just passed.

Mr. McCombe: The Truck Transportation Act, among other things, is aimed at legitimating a type of business that has gone on for many years under various guises known as single-source leasing; that is, the acquiring of a vehicle and driver or multiple vehicles and drivers by either a private carrier or a for-hire carrier on a long-term lease basis. That has not been legal unless you acquired the vehicles from one source and supposedly the drivers from an arm's-length, other source.

This is a desirable type of operation to augment fleets, for example, provided those in the business are doing it on a long-term basis; that is, not trip leasing or whatever, day by day, but contracts to provide drivers and

vehicles for no less than 30 days. This will cover the single-vehicle owner who can get an owner-driver operating authority under section 4 or the single-source authority, but it is an authority that permits you only to operate under long-term contract for either a licensed carrier or a private shipper and that lessee assumes control of the business and operates under his commercial vehicle operator's registration in terms of safety records.

That type of contract is contemplated and required by the act and hence it would be illogical as soon as a single-source licensee entered into a contract to have his licence terminated because he had entered into such an agreement giving control. It is the whole purpose of that nature of licence that the control be in the lessee.

Mr. Morin-Strom: That was a long explanation. Is the summary that you are allowing a lot of truckers who are currently illegal in the province to suddenly become legal?

Mr. McCombe: Those who pass a fitness and public interest test, yes.

Mr. Morin-Strom: More deregulation.

Mr. Chairman: Anything else, Mr. Morin-Strom?

Mr. Morin-Strom: You cannot catch them, so legalize them, I guess.

Mr. McGuigan: We have illegal people out there, sure. That is the effect of deregulation.

Mr. Morin-Strom: It is only because you are not enforcing it. You do not have the people out there to do it.

Mr. McGuigan: It is not that; it is the ambiguity of the law.

Miss Roberts: I was just wondering at the comment of my learned friend because I had some concern. It confused me because he was indicating that there were illegal people out there, but the illegal people who are out there are going to have to pass the same test that anybody would who came before the board. Is that not correct? I just wanted to be sure I was correct in my own mind.

Mr. McCombe: Yes.

Mr. Chairman: Any other comments? Shall subsection 5(5) carry as in the bill? All those in favour of subsection 5(5), please indicate. Opposed? It is carried.

Section 5 agreed to.

1730

Section 6:

Mr. Chairman: Are there any comments or questions on anything up to subsection 6(4), where there is a government amendment?

Mr. Morin-Strom: On subsection 6(1), this is where we get into a very important part of this bill; we first start talking about a fitness test. I think this may be the first section where fitness is mentioned, subsection 6(1). Is that right?

Mr. Cousens: It is as far as I can see.

Mr. Morin-Strom: Would this be an appropriate point to start talking about the fitness test?

Mr. Chairman: Yes.

Mr. Morin-Strom: There have been a lot of concerns raised about the fitness test which has been proposed by the ministry, the fact that it is not really a fitness test but is a test of whether you can fill out an application form.

I suppose one of the things I wanted to talk about in a bit of detail is the specific application form the ministry is proposing to use, although perhaps it would be better to talk about the application form under subsection 6(2).

Mr. Chairman: I was going to ask that you be careful in dealing with section 6.

Mr. Morin-Strom: Shall we have a general discussion of the fitness test here for section 6?

Mr. Chairman: When you get to subsection 6(4), it covers the requirements or what goes into the consideration of the fitness test. I would just ask that you keep that in mind.

Mr. Carrothers: Maybe we can pass subsections 6(1) to 6(3) and then discuss subsection 6(4).

Mr. Chairman: It would be quite in order to go through subsections 6(1) to 6(3) and then deal with it entirely under subsection 6(4).

Mr. Morin-Strom: I do not think so, because I have serious concerns about the application form, which is referred to in subsection 6(2).

Mr. Chairman: Okay.

Mr. Cousens: I would prefer, if the chairman would permit, that there be discussion on the point Mr. Morin-Strom is making on fitness and then we can come back to it, because I think there are overlapping concerns, unless we are really going to stick by the law. Otherwise, we are going to have to raise the questions here. I would rather that you allowed some flexibility.

Mr. Chairman: Is it agreed, then, that we will have a broad discussion on fitness but that we will keep that in mind when we get to subsection 6(4) and not duplicate the arguments?

Mr. Morin-Strom: In subsection 6(4), we have amendments. Of course we are going to speak to those amendments.

Mr. Chairman: I am not quarrelling on that.

Mr. Cousens: What is the chair trying to say?

Mr. Chairman: I am trying to say that if we want to have a broad-ranging discussion on fitness under subsections 6(1), 6(2) or 6(3), that is fine, but that we not duplicate the same thing under subsection 6(4).

Mr. Cousens: There is hardly any chance of that.

I am concerned. What are the guidelines for fitness? They overlap this whole section, so I would not mind a presentation on it just so I know exactly what you are talking about. I think Mr. Morin-Strom is raising a very serious point and it comes through in all of section 6. I do not know where the chairman is coming from on this.

Mr. Chairman: Why do we not go ahead and have a discussion on fitness under subsection 6(1)?

Mr. Morin-Strom: I think serious concerns have been raised and we have heard them. Again, I am going to use as my example the Canadian Transport Lawyers' Association, because this was one of the most detailed and legalistic briefs we got. We are talking about pretty legalistic language here, so I think we better use what the lawyers are telling us. In their major document, they go on for more than two pages in detail on concerns about the fitness test proposed in here.

I guess I am at your discretion. Either I can take a response in reaction to this, if the government people are aware of it; otherwise I will go through it and ask questions as I go through it.

Mr. Carrothers: Is that a question about whether we are aware of something?

Mr. Cousens: I think it would be better to go through it, because there is so much to it.

Mr. Carrothers: I think you can assume we are aware of the brief. If that is the point, you will concede we are aware of it, Mr. Morin-Strom.

Mr. Chairman: Go ahead, Mr. Morin-Strom.

Mr. Morin-Strom: The transport lawyers point out that there are, under this legislation, four absolute requirements for a determination of fitness. They are that an applicant must hold a certificate of competency, must be insurable, must not be an undischarged bankrupt and must not hold a CVOR that is under suspension or subject to fleet limitations. There is no reference in the fitness test to the capacity of an applicant to serve a proposed market. This represents a departure from the major report, Responsible Trucking, which contemplated fitness determination which was calibrated to the capacity of an applicant to carry on the proposed business.

In the absence of any means of measuring this capacity, it is hard to see how this fitness test, in fact, conforms with what had been agreed to by a wide-ranging report that had tremendous input into the conclusions of the Responsible Trucking report. Why does the fitness test not deal with the actual capacity of an applicant to serve a given market?

Hon. Mr. Fulton: It is reversing the whole process of getting in, so that it is not an adversarial battle between lawyers before the Ontario Highway Transport Board. It is getting away from that 60-year-old regime, putting it behind us.

Mr. Morin-Strom: Are you not concerned about the safety of the—

Hon. Mr. Fulton: Of course we are, and you know it. That is why we

passed Bill 86 some time ago. Of course we are concerned about safety, and you know it.

Mr. Tatham: Are you fellows preaching for a call?

Mr. Chairman: I think you should ignore the interjection, Mr. Morin-Strom, and carry on.

Mr. Cousens: I do not understand.

Mr. Morin-Strom: No, I do not understand that, either. The test, as it has been proposed and as in the application form which the ministry has put out, appears to be simply an administrative test as to whether you know the rules of the road—

Hon. Mr. Fulton: Precisely.

Mr. Morin-Strom: —and can come in and answer the questions properly.

Hon. Mr. Fulton: Precisely; an administrative test, absolutely. That is what this issue is all about.

Mr. Cousens: May I just interrupt? I am sorry. You raised four points that were defined as part of fitness. Those are all part of it, or are they not? They are? Are there any other elements that are taken into consideration for fitness?

Hon. Mr. Fulton: I do not recall hearing a reference to their past safety record, but that is also part of the fitness test.

Mr. Cousens: Okay.

Hon. Mr. Fulton: And other matters, as outlined under clause 7(4)(a), Mr. Cousens, if you have had a chance to read a little further ahead.

Mr. Cousens: Yes, they seem to be fairly self-evident. I think the minister is to be complimented, because that was not raised in it, the whole business of safety and the record and the degree to which that has affected their performance. You have a testing on that through their insurance records, is that how you do it? What is your methodology of determining their safety record?

Mr. Hobbs: The commercial vehicle operator's registration.

Mr. Cousens: Okay.

Mr. Hobbs: So you have it all right there.

Mr. Cousens: Is this checked? Are you saying it is?

Mr. Hobbs: It will be.

Mr. Cousens: Is it now? Is there anything new in the fitness test that is being put in now? The minister is indicating that it is going to be more free, an administrative test more than anything. Where would you put the major difference as being, between present and past?

Mr. Hobbs: In terms of the past process, someone applied to the

board and then had to come in front of the board and prove that, if anyone objected, which was quite often the case, you had an adversarial situation in front of the board, where it was the responsibility of the applicant to demonstrate a definite, particular need, which was open to all sorts of objections.

Basically, what we are moving to with this is what Quebec has put into place very recently, and why the Quebecers are very concerned with the fact that we are not moving with this legislation: what is in the body of the federal legislation and what do other provinces either have in place or are contemplating? That is more of an administrative test, with a safety net in the public interest test, as the basic process for entering the market.

Mr. Cousens: Do you have a minimal safety level? How do you determine what that is?

1740

Ms. Kelch: Under the commercial vehicle operator's registration, we evaluate all of the convictions an operator has accumulated. We look particularly at those convictions which are safety-related, of which there are many. We have a system which is basically a tolerance level kind of system, which we have in fact shared and discussed with the industry. Keeping in mind the size of your fleet, we have a point system, and once you reach a certain point level we are in fact getting into investigation, discussion and potentially and ultimately a sanction process with the carriers.

Mr. Cousens: That is in place now, basically, is it not?

Ms. Kelch: Bill 86 puts the final crowning touch on that system, which is the requirement for each carrier to have a CVOR registration number. But the process is in place, yes, and it is functioning today.

Mr. Cousens: I thought it was. I guess it is just a matter of how you administer it, basically. The worry some have is that they feel it is a little strict sometimes. I do not mind that because you are moving to a standard which is going to be at a common level, so it touches on what the minister was saying about the high level of safety. Are there any other criteria? Mr. Morin-Strom did review a few of them. Those are basically what you are looking for. Is that correct? Are there any others?

Ms. Kelch: If I can just summarize—I am not sure what Mr. Morin-Strom referred to and what he did not—just so we can be clear in terms of what is in the tests. Specifically, we request and require detailed information on the applicant as well as the company officers; the past performance record of the applicant, which is the discussion we have just had, that is, an acceptable CVOR record; the out-of-province records will be considered in a similar manner with respect to CVOR; the applicant's safety and maintenance programs—they must prove to us they have both of those in place—and evidence of insurability. Before applying, the applicant or his employee must also pass what was referred to earlier as the competency test, which, again, is an awareness and a knowledge of the safety requirements in the province.

Finally, to obtain an authority the applicant has to show that he has adequate plans according to the new National Safety Code which is in place across the country to cover driver controls and records, vehicle maintenance and records and hours-of-work control. Those are the pieces that constitute the fitness test in Ontario.

Mr. Morin-Strom: Who can take the fitness test?

Ms. Kelch: I am sorry. I do not understand.

Mr. Morin-Strom: Obviously, when it is an individual trying to get a licence, that individual takes a fitness test. But if it is a corporation going for a fitness test, who takes the fitness test for the corporation?

Ms. Kelch: Whoever signs the application.

Mr. Morin-Strom: The one who fills it out is the one who takes the test?

Ms. Kelch: They need to make the determination as to the corporate officer who is going to go through this process.

Mr. Morin-Strom: It has to be one of the corporate officers. Is that what you are saying?

Ms. Kelch: Certainly it is a corporate officer who has to sign the application form, and that is what we would expect. In terms of competency, they can designate an individual within that corporation, within the business, who will take the competency piece of the fitness test.

Mr. Morin-Strom: Do they have to have any particular role in the corporation?

Mr. Hobbs: If they want to ensure that they are going to pass the fitness test, then they have to put somebody forward who has an intimate knowledge of the operation. They are not going to put the corporate secretary on.

Mr. Morin-Strom: A corporation has to have one person who knows enough about how to fill out application forms and enough about his own company to be able to pass the test?

Ms. Kelch: No. They have to have the information and the knowledge, as I have described on the list.

Mr. Morin-Strom: I have a copy of an application form. Can we get a copy of the application form which is going to be used?

Ms. Kelch: We submitted it earlier, Mr. Chairman.

Mr. Chairman: Are you talking about the fitness test?

Mr. Morin-Strom: Yes.

Mr. Chairman: Yes, that was submitted.

Mr. Morin-Strom: I understand the application form was struck down by the court. Is that the case?

Ms. Kelch: Not to my knowledge.

Mr. Hobbs: The act has not been passed.

Mr. Morin-Strom: So this application form is not being used at all at this point.

Ms. Kelch: There is no Truck Transportation Act licence in Ontario at this point.

Mr. Morin-Strom: Is this licence application solely for the TTA or will it be used for federal applications as well?

Ms. Kelch: We are hopeful that we will have an application that can be used for both.

Mr. Morin-Strom: Is it being used now for the federal application?

Ms. Kelch: There is an application form for the Motor Vehicle Transport Act, yes.

Mr. Morin-Strom: Was that struck down?

Ms. Kelch: Not to my knowledge.

Mr. Morin-Strom: That was not the subject of the court case?

Ms. Kelch: Not the form itself.

Mr. Morin-Strom: Perhaps I have been misinformed.

Mr. Cousens: One of the things the registrar touched on—I would like to have some satisfaction—and the problem is, you do not have any evidence of a criminal element involved with this activity, but when you raise the spectre of reviewing the people behind the company and checking them, do you do any police investigation on them or do you have any way of determining whether the people you are dealing with have criminal sentences or any criminal backgrounds, have previously been charged or are now under some kind of suspended sentence or have any kind of criminal involvement?

Ms. Kelch: I guess if you look at clause 6(4)(a), if I have my numbers correct, we do include the Criminal Code of Canada as an item of the pieces of legislation that we look at. As we all know, there are specific aspects of that code that deal with safe driving in this country, so that we certainly do have convictions in that area as part of an individual commercial vehicle operator's registration record.

Mr. Cousens: I raised it from another perspective—I want to be very careful in a public session that I do not raise questions that cause trouble to anyone specifically—but we all know there are different industries at different times that have elements of society that will try to become involved with them, and this is no exception. There is a sense in which there is a need for you to maintain more than just a cursory glance at the people who are involved with some of the licences than might otherwise be the case.

To what extent do you involve the police in reviewing some of the licence applications?

Ms. Kelch: You asked for my mandate earlier. Currently, it is not within the mandate of the registrar to do that kind of investigation.

Mr. Cousens: I would not have thought so, but does it happen? Are there times when you would ask for another investigation or a further check on it?

Ms. Kelch: I think you are aware that in this province, over a number of years we had various concerns raised in various parts of the trucking industry. When there is evidence that there is wrongdoing, we call in the Ontario Provincial Police, which is the appropriate body to do that.

Mr. Cousens: At what point do you do that?

Ms. Kelch: I guess it is like any other instance where we are dealing with a public issue or a public problem; we would await these issues being brought to our attention.

Mr. Hobbs: That issue can be raised with respect to virtually any industry sector.

Mr. Cousens: I do not want to cause anyone any particular hardship because of this question. I think it is just a concern that comes through, so that there has to be a sense of vigilance on it. I guess it ties into another thing, and I would rather talk with you privately about that one.

Ms. Kelch: That is fine. Any time.

Mr. Cousens: The other element that comes into it is when you have got unscrupulous people who have had a licence, who have lost a licence and then come up under another name or with another company. Normally, they are not people you want to give a licence to. Have you a way of determining whether or not they are involved with company B, now that you got rid of them from company A, where they were a problem?

Ms. Kelch: I guess part of the way that we are trying to deal with that in a very direct way is the CVOR system where, if you have ever wanted to operate in the province, you will have to have a CVOR registration number, so we will have your operating record in the province.

1750

Mr. McGuigan: Could I have a supplementary on that? That is an interesting question, because I know in some US law people are prohibited from engaging in an industry if they have a certain record. There is a case I would like to ask about where this may impinge upon it. That is the case where the driver was jailed for five years because of negligence and the owner was jailed for five years because of negligence.

Is there not a real onus now on the chief executive officer, the top man, to see that he does not have people like that in his employ, because in the event of some catastrophe it is the chief executive officer who may be looking through bars? Is that not a factor in this whole system today?

Ms. Kelch: Certainly, the one item that I listed here is that in terms of the fitness test we do expect, if you want to receive a TTA authority in the province, that you have a system in place which indicates that you do have control over the people in your employ. Of course, of particular interest to this ministry are the drivers. If you do not have that in place, then you will not be deemed fit.

Mr. McGuigan: If you had a renegade, such as Mr. Cousens mentioned, that would certainly be a good reason for turning him down.

Ms. Kelch: I am not sure how we determine what a renegade is, but

all of the pieces of legislation that we list—I believe there are eight or 10 of them there—if you have shown in terms of your record that you have convictions against these pieces of legislation, that would be a way for us to determine, I guess, whether you are a renegade or not.

Mr. Cousens: I like what you are saying and yet, to me, there is a dimension to so much that is going on in our society today that says there is another element there that we just cannot take for granted, when we are running systems, that everything is going to be as clean and good as it is going to be with 99.9 per cent of those people we are dealing with..

There has to be a way, by exception reporting or by other methods—maybe you are going to do it through your numbering system by virtue of the fact that they all have a number and you can bring them out—whereby, if someone has been ruled to be unworthy of being given a licence in the future, we have a way of shutting them out and then you have the prerogative to disqualify their application, turn it down or whatever else.

I am concerned that this is being done and is being followed up. I am looking for another level and it is probably not going to happen for a while.

Mr. Hobbs: A lot of what you are talking about would be dealt with under other laws. I understand what you are talking about, but the fact that someone had a criminal record that related to something other than the types of safety considerations that we are dealing with here—

Mr. Cousens: Yes, but it is not safety-related things that I am talking about.

Mr. Hobbs: Yes. In terms of operating trucks, we are dealing with the safe operation. In terms of the trucking bill, if there is something else that enters into the picture in terms of a criminal record, then it is going to come up in the course of how the business is operated, not how the trucking company is operated.

Mr. Cousens: I hear you and I accept that. I guess to me there is another whole aspect here where I think we could shortcut some of these people. I just want to make sure that we are putting the systems in place to help make sure that there is certainty.

I have an example in another area, where we have home builders who are able to come out and they have a company, they build a home and then they do it to someone and then they change to another numbered company and then another numbered company. It is the same crooks. There is only a very small number of them around who are doing it, but those few people give a bad reputation to that industry. Presently, under another set of laws, under the Ministry of Consumer and Commercial Relations, there is just no way of dealing with it.

Ms. Kelch: On that point, I do have to share with you that currently, in the existing function of the registrar, it has been my experience, both in trucking and in busing in this province, that if there is, to use your word, "unscrupulous" activity going on which is in some way having a detrimental impact on transportation and the image of transportation in the province, then the competitors are very quick to let me know that. I think that is one of the genuine safeguards that we have in the system here, that those kinds of things are brought to our attention.

As the deputy quite rightly indicates, it may be another piece of legislation or another aspect of the business that needs to be pursued, but that allows us then to call in the appropriate authorities.

Mr. Cousens: To me, one of the great strengths of the industry right now is that it does have a high ethical standard as a group and that reporting through you is just another way of your referencing and checking. How do you make public that you are reviewing the fitness of a company at a particular time? Is there a way in which people can, during the process of your considering their fitness, know that you are doing it. Is it gazetted?

Ms. Kelch: No. The fitness is not, but the way the process is designed, both at the federal level and at the provincial level, is that the applicant applies for the authority and must go through the fitness determination and the safety rating. It is then determined by myself whether that individual is fit or not. Then that is gazetted. If an individual feels that a particular application has some potential detriment to the public interest, then it is his opportunity to come forward, but people are not invited to come forward through the fitness determination.

Mr. Cousens: At that point, once it is gazetted, how long before it becomes final?

Ms. Kelch: I guess it depends on whether a public interest test is in fact asked for. If it is, then it is up to the board to look at the evidence and determine whether in fact it is prima facie. If it is, then they have the scheduling challenge, among all of their other work, to determine when the hearing can be held and how long it will take. There are no guarantees on that.

Mr. Cousens: So, when it is gazetted, it is not final. You still have the right then to come back and review it per se.

Ms. Kelch: When it is gazetted, an individual has the ability to challenge public interest, if he can prove it.

Mr. Chairman: Okay for the moment, Mr. Cousens?

Mr. Cousens: I appreciate the way the questions are being answered. I just want to be careful that I am not in any way casting any aspersions on any people who are applying, but I want to make sure that the steps are secure.

Mr. Chairman: Since it is unlikely that we will finish not only the bill—

Hon. Mr. Fulton: Oh look, can we not move it as presented?

Mr. Chairman: —but also section 6, it would be an appropriate time to pack it in. The minister has something to distribute to the committee.

Hon. Mr. Fulton: Yes. I have for the committee the press release with respect to the appeal against the court ruling that we were talking about the other day.

Mr. Chairman: Thank you. Members of the committee will recall, I assume, that we are not sitting on Monday, which means that we will sit on Wednesday and Thursday, at which point we will commence again on section 6.

The committee adjourned at 5:58 p.m.

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STANDING COMMITTEE ON RESOURCES DEVELOPMENT

ONTARIO HIGHWAY TRANSPORT BOARD AMENDMENT ACT
TRUCK TRANSPORTATION ACT

WEDNESDAY, NOVEMBER 9, 1988



STANDING COMMITTEE ON RESOURCES DEVELOPMENT

CHAIRMAN: Laughren, Floyd (Nickel Belt NDP)

VICE-CHAIRMAN: Wildman, Bud (Algoma NDP)

Black, Kenneth H. (Muskoka-Georgian Bay L)

Brown, Michael A. (Algoma-Manitoulin L)

Dietsch, Michael M. (St. Catharines-Brock L)

Grier, Ruth A. (Etobicoke-Lakeshore NDP)

Marland, Margaret (Mississauga South PC)

McGuigan, James F. (Essex-Kent L)

Stoner, Norah (Durham West L)

Tatham, Charlie (Oxford L)

Wiseman, Douglas J. (Lanark-Renfrew PC)

Substitutions:

Carrothers, Douglas A. (Oakville South L) for Mrs. Stoner

Hampton, Howard (Rainy River NDP) for Mr. Wildman

Miller, Gordon I. (Norfolk L) for Mr. Tatham

Morin-Strom, Karl E. (Sault Ste. Marie NDP) for Mrs. Grier

Roberts, Marietta L. D. (Elgin L) for Mr. McGuigan

Wildman, Bud (Algoma NDP) for Mr. Laughren

Clerk: Mellor, Lynn

Staff:

Drummond, Alison, Research Officer, Legislative Research Service

Yurkow, Russell, Legislative Counsel

Witnesses:

From the Ministry of Transportation:

Fulton, Hon. Ed, Minister of Transportation (Scarborough East L)

Kelch, Margaret, Assistant Deputy Minister, Safety and Regulation

Hobbs, David G., Deputy Minister

McCombe, C. Jeffares, Director, Office of Legal Services

LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON RESOURCES DEVELOPMENT

Wednesday, November 9, 1988

The committee met at 3:35 pm in committee room 1.

TRUCK TRANSPORTATION ACT
(continued)

Consideration of Bill 88, An Act to regulate Truck Transportation.

Mr. Chairman: The standing committee on resources development will come to order. We had better start before someone leaves again. We have enough people here to continue our debate on Bill 88, An Act to regulate Truck Transportation.

Mr. Morin-Strom: First of all on our schedule, this week we are meeting on Wednesday and Thursday. Next week, I suspect there is a problem for some members.

Interjection: Next week?

Mr. Morin-Strom: Next Monday, I suspect there is a problem for some members, being a municipal election day. I know myself, as critic for our party, I will not be here in Toronto on Monday. I suggest that it might be wise to agree not to meet on Monday.

Mr. Wiseman: I think if we do not get through today and tomorrow, we should leave it on Monday.

Mr. Chairman: Not meet on Monday?

Mr. Wiseman: Not meet on Monday if we do not get through or if we have other business.

Mr. Black: Is there no sense of urgency? We need to get on with the work of the House.

Mr. Carrothers: I think we need to get on with the work of the House.

Mr. Chairman: Without telling the committee what it should do, of course, sometimes when there is co-operation on committee members' schedules, including the minister's, things run more smoothly in the debate. The bill is then expedited in a better fashion than it would otherwise be. That is not always the case, of course, but it is from time to time. If, for example, the minister happens to be away on a Monday or any other day, and the committee agrees to sit on Wednesday and Thursday that week, then it facilitates ensuing debate on the bill.

Mr. Dietsch: That is a valid point. I think you raise an excellent point. If we can make some good inroads between today and tomorrow, that would be something that could certainly be considered on Thursday afternoon.

Mr. Chairman: I was not suggesting there was any kind of sword over the members' heads. We are here to debate the bill clause by clause.

Mr. Carrothers: I think Mr. Dietsch has a very good suggestion. Why do we not take this back up on Thursday afternoon?

Mr. Chairman: Is that all right, Mr. Morin-Strom and Mr. Wiseman, that tomorrow we make a decision concerning whether or not this committee meets on Monday? Minister, you look concerned.

Hon. Mr. Fulton: I am always concerned. It is the heavy weight of responsibility. I was not here on Monday because I was doing something of critical importance to both northern and eastern Ontario, as well as other sections, but especially up in northern Ontario.

Mr. Chairman: We have not noticed yet, but I assume we will.

Hon. Mr. Fulton: The results are coming. We made a big announcement last week that affects the north.

As far as the schedule is concerned, if it is at all possible, depending on the progress today, we might like to recess a little bit early, but I will leave that up to your discretion. We can be here tomorrow. On Monday, I guess, we all share the same kind of concern. On Wednesday, we can be here. On Thursday, we have a long-scheduled commitment to be in northern Ontario again.

Mr. Chairman: Not this Thursday?

Hon. Mr. Fulton: No, a week tomorrow, and then for several days after. You know our affection for the north. We are spending a considerable amount of time up there.

1540

Mr. Chairman: I think that was the point I was trying to make.

Hon. Mr. Fulton: And money. There was only \$85 million last week.

Mr. Black: You must be spending it in the north, because it is not coming into Muskoka.

Hon. Mr. Fulton: I thought the district was now, by definition, part of the north.

Mr. Chairman: Order. The point I was trying to make in my earlier remarks was that sometimes it cuts both ways in co-operating with members' schedules. That was the only point I was trying to make. Perhaps tomorrow afternoon we can make a decision on next week's committee schedule. All right? Let us proceed.

Section 6:

Mr. Chairman: When we concluded debate when last we met, it was on subsection 6(1). There had been some debate on subsection 6(1), but we had not voted on it. Is there any further debate on subsection 6(1)?

Mr. Morin-Strom: I did not get a chance yesterday to get into some of the main points I had, specifically on the application form for the

licence. I would like clarification if exactly the same form or a very similar form to the one currently being used for the federal law will also be used now for this Truck Transportation Act or otherwise. Do you have a draft of what you are planning to use for your application form?

Hon. Mr. Fulton: I am not sure we have one here, whether Ms. Kelch has one with us. I am not sure it is overly important, but if it is important to you, we would certainly get hold of one for you.

Ms. Kelch: It is very similar.

Hon. Mr. Fulton: It is 8 or 10 pages and similar content.

Mr. Morin-Strom: In that case, I do have a copy of the one that is currently being used. One of the things that has been raised is a serious concern that this application form, which I understand is the basis for the fitness test—am I correct that you have said the fitness test is going to be an administrative test, not—"adversarial" was the expression, I think. You want it to be an administrative test. Am I correct that the safety evaluation is based predominantly upon the application form?

Ms. Kelch: Including the commercial vehicle operator's registration record.

Mr. Morin-Strom: One of the concerns about this test is that it may be discretionary in nature. I would like to know how you determine whether you have passed the test or not. Is there a scoring, a grading? Do the people who are taking the test know what the basis for success versus failure is?

Ms. Kelch: I do not understand.

Mr. Morin-Strom: Or is it just a subjective judgement as to whether they have passed the test?

Ms. Kelch: Certainly, if for some reason an individual is not found fit, I do have to give reasons, yes.

Mr. Morin-Strom: Currently, right now, you are using the test for a similar evaluation under the external application. Is there a scoring process? I have been told that an applicant has to get 80 per cent in order to pass your test. Is that true?

Ms. Kelch: I do not understand what that 80 per cent would refer to.

Mr. Morin-Strom: I am referring to questions 13 to 31 of the test, which are the safety questions. I have heard that you need an 80 per cent score to pass the test. Is that the case?

Mr. Hobbs: I do not know where you heard that from.

Mr. Morin-Strom: Well, what do you need to pass the test?

Ms. Kelch: You have to be able to indicate to the ministry that you understand the rules that apply in Ontario.

Mr. Wiseman: Are there really 100—some questions or 80—some questions on there?

Mr. Morin-Strom: This has 37 questions.

Interjection: Related to safety.

Mr. Morin-Strom: No, the safety questions seem to be numbers 13 to 31, which would be less than that.

Ms. Kelch: It is the entire application form you have in front of you. Is that correct?

Mr. Morin-Strom: That is right, yes. It says, "An application to the Minister for an Operating Licence issued under the authority of the Motor Vehicle Transport Act, 1987."

Ms. Kelch: And a portion of that refers to fitness. That is correct.

Mr. Morin-Strom: Right.

Ms. Kelch: We evaluate those questions, including the individual's operating record, to determine whether he is fit.

Mr. Morin-Strom: But you do not have criteria for determining whether they have passed or not?

Ms. Kelch: Of course, we have answers to those questions. If the answer is correct, then you are deemed to be fit. If the answers are not correct, you are not.

Mr. Hobbs: Same as when you go in for a driver's test.

Mr. Morin-Strom: Do you have a document you provide to applicants that goes over the kinds of information they have to have?

Ms. Kelch: As we indicated to you earlier, Mr. Morin-Strom, we do have this document that is handed out to individuals with the application form to ensure they understand the rules of the road in Ontario. We trust they would use that in an attempt to ensure they are answering the questions correctly.

Mr. Hobbs: This certainly has not been a problem that has been raised in any of the other jurisdictions where the MVTA is now in place.

Mr. Morin-Strom: Would the document in fact provide enough information to pass the test?

Ms. Kelch: Of course not. It is just a guide.

Mr. Morin-Strom: It has been contended before us that your test does not provide adequate protection for safety concerns. This has been recognized in the research document we received.

Ms. Kelch: Could you tell us why that would be the case.

Mr. Morin-Strom: I will give you one example of why it is the case.

Hon. Mr. Fulton: Who is telling you?

Mr. Morin-Strom: I see it right here: "Concern was expressed this

test does not offer adequate protection of safety concerns." This is based on the Teamsters, Locals 91 141-879, 880 and 938 submission. Similar concern was also presented by Manitoulin Transport Inc. So we have two testimonies in that regard.

Mr. Hobbs: We do not agree with that.

Hon. Mr. Fulton: It was not raised by any of the large, large number of people, including other trucking companies, that appeared before the committee in the most recent committee hearings and in my office in the previous go-around.

Mr. Morin-Strom: We are getting at the test at this point. One of the serious concerns that has been brought to my attention is that there are only three questions that address carriers' fitness to carry dangerous goods, numbers 29 to 31 in this application form.

I would like to read what those questions are. The first question is, "If a vehicle carries dangerous goods in a quantity that requires placards, what is the minimum number of placards that must be displayed?"

We can probably get the answer right here. What is the minimum number?

Ms. Kelch: I beg your pardon?

Mr. Morin-Strom: What is the minimum number of placards that must be displayed. "If a vehicle carries dangerous goods in a quantity that requires placards, what is the minimum number of placards that must be displayed?"

Mr. McCombe: I believe the answer is four.

Mr. Morin-Strom: "30. To whose standards must the driver of a vehicle carrying dangerous goods be trained?"

Mr. McCombe: That is prescribed under the regulations under the federal act which are adopted under the provincial statute. It is all spelled out in a handbook for trucking in Ontario published by the ministry for these people.

Mr. Morin-Strom: Third, the last one on dangerous goods is, "How long is a driver's dangerous goods certificate of training valid?"

Ms. Kelch: We are not applying for a—

Mr. Hobbs: We are not applying for the test. What is the concern? It is not, "What is the answer?"

Mr. Morin-Strom: Can I get an answer to that one?

Mr. McCombe: What is the point?

Mr. Morin-Strom: The concern is that obviously that is one year or whatever you are going to tell me the answer is. The point is those are the only three questions you ask to determine whether a carrier is fit to carry dangerous goods or not. That is the full extent of your test. Can you tell me where you are going beyond that to —

Mr. Hobbs: In terms of the fitness test?

Mr. Morin-Strom: That is right, of which safety is supposed to be one of the critical components.

Mr. McCombe: You have to take a look, as well, at subsection 6(2), which says there must be a certificate of competency holder. To acquire the certificate of competency, there is a much more extensive examination that has a whole section on dangerous goods. So that is one aspect. There must be someone who has demonstrated his knowledge of the dangerous goods law through the certificate program.

The second is that every driver who operates a vehicle under the authority of the licensee must be trained to the requirements of the dangerous goods legislation. This legislation does not take over the responsibility of the Dangerous Goods Transportation Act, 1981, or the Transportation of Dangerous Goods Act (Canada), which are made reference to in clause 6(4)(a) which is part of the registrar's appraisal of fitness.

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Mr. Morin-Strom: My understanding is that the federal Motor Vehicle Transport Act, under section 5 of its regulations, before it can issue a fitness certificate, requires the province to have proof of a comprehensive knowledge of the regulations under the Transportation of Dangerous Goods Act.

Ms. Kelch: That is what the competency test does. I do not believe many other provinces have that.

Mr. Morin-Strom: Is that doing it for the corporation as a whole—the people who are trying to get a licence to run the corporation—or is that applying to an individual driver?

Ms. Kelch: We indicated the other day that the corporation has to make a decision on who is going to take that competency test. Also, there is a section in the legislation that deals with the competency test specifically. It indicates that under the regulations the minister can make a decision that more individuals in that firm need to take that competency test.

Mr. Hobbs: We believe that when the various pieces of legislation that deal with the transportation of dangerous goods are taken together, there are some very strong safeguards in place in Ontario compared to a lot of other jurisdictions.

Mr. Chairman: Anything else on subsection 6(1)?

Mr. Wiseman: Is that booklet you have there handed out across all the provinces? Someone who got his licence in Ontario, would the information in there be relatively the same in every province, then?

Mr. Hobbs: This is available for whomever.

Mr. Wiseman: In any of the provinces?

Mr. Hobbs: Yes.

Mr. Wiseman: So if you have it in Ontario, the chances are it would be the same in Alberta or wherever.

Mr. Hobbs: If somebody wants to do business in Ontario, he has to get hold of it.

Mr. Chairman: Enough on subsection 6(1)? Shall subsection 6(1) carry as in the bill? All those in favour? Opposed? Carried.

Anything on the rest of section 6 of the bill, subsections 2 through 4? You have an amendment on subsection 6(4)? Any comments or questions on subsection 6(2)? If not, shall subsection 6(2) carry? Carried. Any comments, questions or amendments to subsection 6(3)? Carried.

We move to subsection 6(4) on which there is an amendment that is going to add a section.

Mr. Morin-Strom moves that subsection 6(4) be amended to read as follows:

"(4) In determining the fitness of an applicant, the board shall consider,

"(a) the past conduct of the applicant or, where the applicant is a corporation, of its officers and directors, including the applicant's safety, financial integrity and customer service record, the business plan, and record of convictions available to the minister under this act and the Highway Traffic Act, Public Commercial Vehicles Act, Motor Vehicle Transport Act (Canada), Compulsory Automobile Insurance Act, Environmental Protection Act, Employment Standards Act, Fuel Tax Act, 1981, Dangerous Goods Transportation Act, 1981, Criminal Code (Canada), Canada Labour Code, Transportation of Dangerous Goods Act (Canada), and the regulations thereunder and such other statutes as may be prescribed, and comparable statutes and regulations of other jurisdictions that afford reasonable grounds for belief that the transportation service will not be operated in accordance with the law and the public interest; and

"(b) such certificates of shipper support as may be required by the board;

"(c) such other matters as are prescribed by the board."

For the clarification of members, you will notice—and this is very helpful—that the new words or sections are underlined. In the first sentence "board" is changed from "registrar," the underlined section in (a), all of (b) and then "by the board" in (c).

Mr. Morin-Strom: Considerable concern has been expressed about the fitness test as specified in this legislation, and I think we have a responsibility to ensure that we have a real fitness test in this act. Some of the critical factors affecting fitness have not been covered by the clauses in subsection 6(4) as presented previously or in the original bill.

I guess we could go through several of the points of changes that are in here. This amendment asks that the conduct not only of the officers but also of the directors of the firm should be taken into consideration and, as well, that the applicant's safety, financial integrity and customer service record be taken into consideration in the determination of fitness.

Obviously, these are critical factors in terms of the applicant's ability to carry out its responsibility to the general public and to ensure that we do have responsible trucking operations in the province. I think safety should be included explicitly in this section in determining fitness, not excluded, as it was previously.

Certainly the idea of financially insecure firms going into the business puts at risk individuals and families as well as businesses because of the types of investment and losses that can be associated with mishaps, serious accidents, on our highways. I think the customer service record should be included as evidence of ability to serve a market, and I think the province should take some responsibility for ensuring that firms are able to provide the service they are intending.

As well, there was testimony in front of the committee asking for a business plan. We have suggested that new firms in the trucking business should not be given a blank cheque in the terms of their ability to undertake any kind of trucking activity but should present what their intentions are so an assessment can be made of their ability to carry out that plan.

Under clause 6(4)(b) I feel that the board, in making its determination of fitness, should also be able to require certificates of shippers' support to provide evidence of the company's fitness as a trucking firm.

Most critical, of course, is the suggestion that the fitness test should be handled by the transportation board itself rather than by the minister or by the registrar, as it was originally specified. We received much testimony through our hearings from various groups regarding this fitness test. I guess I would refer to the notes that have been provided to us by the researcher.

1600

On section 6, regarding this test, we have recommendations, such as that from Thibodeau-Finch Express, that the fitness test be comprehensive and effective in disqualifying unsuitable applicants. We have an extensive presentation, of course, from the Canadian Transport Lawyers' Association:

"If the fitness test is to be consistent with the consensus agreement embodied in Responsible Trucking"—the major study that was done by the various groups involved in the trucking business, consumers, shippers and truckers, along with government involvement—"then it should be modified to require the provision of a detailed business proposal and the provision of evidence by which to assess the capacity of an applicant to perform that business proposal."

Section 6 should be amended to require the applicant to provide a business plan and, where appropriate, evidence by which to assess the capacity of the applicant to perform that business plan.

One of the major concerns with clause 6(4)(a) is the fact that, as it is currently written, it is a discretionary test that is being given to the registrar, I believe a situation that is inappropriate in terms of proper practices. This evaluation is supposed to be purely administrative, but it is quite clear from the current reading that, in fact, a subjective assessment of these various factors has to be undertaken by the registrar. There is no provision, as I understand it—in fact, I think we got some confirmation of that today—that the basis for the evaluation of the test will be revealed to the public.

We have a situation where arbitrary decisions can be made, and we are really making the office of the registrar into a quasi-judicial office under this section of the act. It is a principle of law that when he is being judged in such a fashion, the applicant has to have the right to be heard, and this act does not provide the applicant with the right to be heard. We must have the applicant having the right to be heard, and the only appropriate place to do that would be in front of the Ontario Highway Transport Board.

Mr. Hobbs: Does this mean you are trying to reinstitute public necessity and convenience?

Mr. Morin-Strom: No. I am suggesting that the fitness of the applicant should be evaluated by the Ontario Highway Transport Board, which in fact has the expertise to do it. As well, it would save us from having two bureaucracies, because the federal legislation already requires that the fitness under the federal test has to be evaluated by the transport board in the province. It seems to be a real waste of taxpayers' money and bureaucracy to set up two separate systems to evaluate fitness when the federal legislation already specifies that the transport board is to have the responsibility for evaluating fitness on external applications. I think we should be consistent with that and have the province, for its intratrucking licences, have the transport board, which has the expertise and the background to provide those fitness tests and to ensure that the applicants have a right to be heard, carry out those fitness tests.

Mr. Carrothers: I just want to make a couple of comments on this amendment. First, I see the word "board" being inserted back in here in place of "registrar," which I think is unnecessary. We have heard the word "quasi-judicial" used. I think it has somehow been bent beyond all recognition in the application in this context. The registrar would not be exercising that kind of function here. It is administrative and I think it is inappropriate to have the board do this. There is an appeal to the Licence Suspension Appeal Board. The kinds of rights available to anybody rejected for this licence are the same as for any other licence issued by the ministry and actually consistent with those for many other kinds of licences across the government. I certainly do not see any difficulty there.

More important, what is being inserted here is a type of business test. I heard the words "bureaucracy" and "waste" used. With all due respect to the ministry and its staff, I am not entirely comfortable with the ability of ministry people to judge whether business can operate or not. I think you are far better off letting the people giving it financial backing do that, letting the marketplace decide that.

Fitness, in the logic of this piece of legislation, equates to ability to operate something safely. I think having to have a bureaucracy in place—and I have worked with some of the departments that do this—you get a lot of staff tied up who could be far better off used somewhere else than judging whether or not this business could keep its doors open financially. If they restrict their activities, as this legislation requires them to do, to simply looking at fitness, then we are indeed ensuring the safety of our highways and not expending unnecessary moneys.

I think this "blank cheque" comment that was issued kind of goes far beyond the mark. There seems to be a very stringent test of ability to operate safely, which has to be gone through by anybody getting a licence. I do not see why we need to put in this business test. All you are going to do is to be tying people up for undue lengths of time arguing over whether somebody's

business plan is an accurate estimate, and anybody who has ever drawn up a business plan knows that your business never does do what the business plan says it is going to do, because the world changes immediately. What you are doing is basically finding out whether or not the applicant has an accountant who is able to draw up a business plan. I make that comment having made applications and having done this kind of thing.

I will not be supporting this amendment to subsection 6(4).

Mr. Wiseman: I support our colleague with his amendment here. I believe the board should again look at these applications that come in. As I looked around the room, I could not recognize many people here who sat on some of those hearings that you, Mr. Chairman, and some of the rest of us did across the province when we heard people talk about the fitness test and how they would like it beefed up a bit.

Mr. Chairman: I cannot forget those hearings.

Mr. Wiseman: You know, it is too bad that some of the people across from me were not there. Now, I know some of them were: Mike, and I think Gordon, were there a bit, but—

Miss Roberts: And myself.

Mr. Wiseman: On one or two. Not very many now. You might have come in to fill in, but I do not want to get into what we got into in the House this afternoon about who was absent and who was not.

Mr. Black: I was there.

Mr. Wiseman: I do not see many who were. If they had been, I think they would have maybe understood a bit of what our colleague is proposing this afternoon to tighten it up a bit more. I think by his changing of the wording he has done that. I would be prepared to support him on that.

Hon. Mr. Fulton: Mr. Wiseman, as a businessman yourself, why do you want to make it even more difficult to get into business in Ontario? You are a free-enterpriser. Your party is that of business. Why would you want to make it so restricted?

Mr. Wiseman: When we went around and listened to the people—I know some of your staff were with us on most of them—and heard the industry say that they wondered just how many teeth your fitness test has in it, I feel that if those people who are working with it on a day-to-day basis are saying that, then it makes some sense; just as with the business I am in, if someone from the shoe industry said certain things should be done a certain way, I would believe they knew more about that than someone who was outside the business.

1610

Hon. Mr. Fulton: But if you wanted to open another store, Doug, in another town, would you really want to have to go through this kind of bureaucracy and have your competition tell you whether you have the right to operate on a corner somewhere, or go through a public administrative hearing in front of some provincial body?

Mr. Wiseman: The only thing is that it is a little different selling shoes than it is operating one of those great big 45-foot vehicles that are on the road and scare the devil out of me and others when they are driving back and forth to our riding.

Hon. Mr. Fulton: Do you sell safety shoes, Doug? Do you have to go through a commercial vehicle operator's registration?

Mr. Wiseman: I do not sell those.

Hon. Mr. Fulton: You probably should.

Mr. Wiseman: I am just saying we are dealing with apples and oranges here, as far as I am concerned. When you are dealing with a truck and the safety of a truck and the fitness of the applicant to drive that truck— I hate to say it, but I think sometimes in the last while that our truckers used to be, in my opinion, the safest people on the road. Today they have some real hot jockey-type drivers out there. By golly, you are taking your life in your hands when three, four or five of them get racing down the highway. I think if a fitness test can eliminate a little of that, driving that kind of vehicle at the speeds they do and racing one another to get by and so on, or watch out for people who get in the business, hire a lot of people and find that, sure, maybe they have not gone bankrupt but they have no business plan, or maybe they are working on a shoestring— It is like an old friend of mine used to say: You turn them upside down and two nickels would drop out of their pocket. There are a lot doing it like that, and I sure do not want to see people caught up in that sort of business transaction.

I think what my colleague is saying, getting back to it again, strengthens it a bit, and I would think the ministry would support it.

Hon. Mr. Fulton: I would think they will not.

Mr. Chairman: Miss Roberts?

Miss Roberts: Well, Mr. Dietsch—

Mr. Dietsch: No, it is okay. I thought we were close to a vote and I was sort of anxious to get on the way.

Miss Roberts: I am sure we are very close to a vote. I have a very brief comment. Hearing my honourable friend speak with respect to how the proposal put forward by the member for Sault Ste. Marie (Mr. Morin-Strom) will tighten up, it is not to tighten up. His amendment is to loosen the strings, and to loosen them considerably. It is to put forward exactly some of the concerns the public interest people have put forward at the many hearings I attended. I remind you that the Board of Trade of Metropolitan Toronto was very much against the insertion of a public interest test, but I think—

Mr. Morin-Strom: They don't represent the public.

Mr. Carrothers: They certainly represent a perspective that Mr. Wiseman was—

Mr. Dietsch: The Canadian transport lawyers represent the public, I am sure.

Miss Roberts: The important thing is that we represent the public here as well. We are here to debate it and to understand what this particular legislation is going to be doing. The fact is that there are several ways of attempting to introduce a quasi-public interest test; this is the attempt of this particular amendment. I understand that the purport of it, again, is to indicate that the board must look into financial integrity and customer service record. I have to agree with my friend, who indicated he cannot support the amendment either.

Mr. Chairman: Nevertheless, you have at least stimulated Mr. Morin-Strom.

Miss Roberts: I thought I might.

Mr. Morin-Strom: The one comment of Mr. Carrothers that I agree with is that questioning the ministry's ability to evaluate business plans or whatever. We never suggested the ministry should do it. We are saying the transport board should do it. Okay?

Mr. Carrothers: My comment still stands with respect to the transport board, Mr. Morin-Strom.

Mr. Morin-Strom: When it comes to Miss Roberts, she said I am trying to loosen the strings. I think I am trying to give some clearer definition as to what is going to be evaluated. We know that if the transport board was going to be doing it, it would be all aboveboard. It would be part of the public record. We would know what the evaluation procedure is.

Hon. Mr. Fulton: On a point of order, Mr. Chairman: The member has suggested that the staff of the ministry might not be able to operate aboveboard. I resent that and ask him to withdraw it.

Mr. Morin-Strom: I am not going to withdraw it.

Hon. Mr. Fulton: I think that is unparliamentary language and completely uncalled for here.

Mr. Morin-Strom: Aboveboard?

Mr. Chairman: It is not an out-of-order comment, so Mr. Morin-Strom, would you go ahead.

Mr. Morin-Strom: I am going to clarify my definition of it. It has to do with whether the applicant has the right to be heard in the process. He does not under the current procedure. If it was before the transport board, the applicant would be able to be heard and he would know what the criteria were.

Mr. Hobbs: The administrative process would be exactly the same.

Mr. Morin-Strom: You are counting on the transport board carrying out whatever your administrative process is now, but it may not carry out your administrative process.

Mr. Hobbs: There is no provision for a hearing, either by the board or by the registrar, and that would not change. You are talking about where two groups of bureaucrats might sit.

Mr. Morin-Strom: Currently, today, if an applicant is attempting to get fitness approved under the federal legislation, how many contraventions of the act does it take in order to fail the test?

Mr. Hobbs: Contraventions of what act?

Mr. Morin-Strom: All these acts here. You have got a list of acts.

Mr. Hobbs: It is not in there.

Mr. Morin-Strom: Okay, let's look at this one. How many contraventions of the acts that are listed here will it take for an applicant to fail this test? Is that going to be clearly laid out to the applicants so that they know what the basis of the test is before applying?

Ms. Kelch: Could I answer that?

Mr. Chairman: Yes.

Ms. Kelch: The commercial vehicle operator registration, which is the item that I use principally in terms of evaluating the applicant's application, is a combination of the various convictions that this individual would have accumulated. Over the period of the record, which is usually three to four years, I would evaluate and balance against the size of the fleet that operator has in place the kinds of convictions, their frequency and their number.

I do not believe it is appropriate to have a template that would go on that and say, "You have achieved two of these, four of those and five of that, and therefore you fail." I believe it is up to the government to use judgement in evaluating exactly what kinds of convictions are on that list and then to determine whether that individual is a safe operator in Ontario.

Mr. Morin-Strom: I think that is a good part of the answer I wanted to hear, because we have just got confirmation from the ministry that this is a judgement. So, in fact, this is a quasi-judicial position—

Ms. Kelch: No, it is not.

Mr. Morin-Strom: —which is inappropriately being given to the registrar.

Mr. Carrothers: One should not equate "quasi-judicial" with "judgement."

Ms. Kelch: If I may, first, I take offence at a bureaucrat not having to use any judgement in terms of making a decision like this. Second, Mr. Carrothers's point: The fact that one uses judgement does not mean that it is a quasi-judicial environment.

Mr. Morin-Strom: The minister has previously said that this test was going to be an administrative test. It does not seem to me that a test that requires judgement in terms of how many violations it requires in order not to pass the test is one that is simply an administrative test.

I will go to another point. That is, where in this section dealing with fitness is there any recognition of accident record? Can the minister explain why you have not specified a firm's accident record, which obviously is rather

critical to fitness in terms of safety, probably in many cases more critical than maybe the number of convictions?

1620

Mr. Hobbs: If you look at clause 6(4)(a), it talks about, "disclosed by the record of convictions available to the registrar under this act and the Highway Traffic Act, Public Commercial Vehicles Act, Motor Vehicle Transport Act (Canada)" and several others.

Ms. Kelch: So accidents would be included.

Mr. Hobbs: Under the Highway Traffic Act and various other pieces of legislation that are listed here.

Mr. Morin-Strom: If there is a conviction, but not the numbers of accidents.

Ms. Kelch: If the individual is at fault in an accident, it will be included here.

Mr. Hobbs: The fact that they are simply involved in an accident.

Mr. Morin-Strom: No matter how many? If they fit within the insurance principle.

Mr. Hobbs: If they are at fault. The normal pattern is that if someone is involved in a lot of accidents, he or she is at fault.

Hon. Mr. Fulton: Then the insurance company takes it. If you do not have insurance, then you do not have the authority to operate.

Mr. Morin-Strom: I guess on the insurable factor, the evidence that someone is insurable is not evidence that one is a safe driver. It may be just evidence that you are willing to pay the much higher premium that is being charged by the insurance company, so simple insurability does not prove anything.

Mr. Dietsch: The point that Mr. Morin-Strom is dwelling on is sort of bothering me. I am curious to know whether, in fact, one individual driver within a company that is licensed can cause that company to lose its trucking licence. The point is being raised about accidents happening and whether an individual who perhaps may have had several accidents and is associated with a percentage of the fault of each of those accidents can prevent an individual trucking company from obtaining a licence. Is that possible?

Ms. Kelch: The important clarification on that issue is the point I made, which is that we do factor in fleet size, so that if you have 25 vehicles with 25 or 30 drivers to operate those vehicles, you would have to have an awful lot of bad apples in order for that to happen.

Mr. Dietsch: I expect, then, having gone through, as I understand it, the application, that it would go to the registrar and a decision would be made with respect to that.

If the licence is granted to a trucking company, obviously there would be no problem. There would be no point to appeal, because that is what they want. But on the other side of that coin, if they did not get their licence,

then they would have that process in which you would have to outline to them the reasons they did not receive that licence. Then that is subject to an appeal process.

So the points that Mr. Morin-Strom is raising would be addressed quite adequately through the process. I understand that. I am having great difficulty understanding why my colleague does not understand that.

Mr. Black: I just wanted to have someone from the ministry confirm that the actual driving record and safety record of the applicant is given the kind of consideration it should be given.

Ms. Kelch: It is given due consideration. I do not know what you mean by "the kind of consideration." I guess it is included in the evaluation.

Mr. Black: Can you give me some impression of the kind of weighting that would be put on it, without getting into a numeric weighting?

Ms. Kelch: There is not so much a weighting process as there is a total evaluation of that individual's operating record. We would be looking at, against these particular pieces of legislation that are listed, what kind of conviction record the individuals who are part of that company actually have in place. If it is unacceptable, then we would not find them fit. More important, I would indicate to them what they have to do in order for us to indicate or to deem them fit: that they should have, for example, safety plans in place, perhaps driver improvement programs, those types of things.

Mr. Black: I just want to be sure I understand. I understand Mr. Morin-Strom's concern about safety, and I think all of us have a concern or responsibility to be concerned about that. But what I hear you saying, I believe, is that in your judgement, in the judgement of the ministry, you are giving every needed consideration to that.

Ms. Kelch: Absolutely.

Mr. Black: Although it may not be spelled out in this particular clause, it is being considered?

Mr. Hobbs: But there is a secondary system in place too, and that has to do with individual drivers' records.

Mr. Dietsch: I want to make one last point so that I am perfectly clear, and that is that we are talking about convictions, we are not talking about charges, correct?

Ms. Kelch: No, this is convictions only.

Mr. Miller: It is not easy to get a trucker's licence at the present time. We have had a lot of people come to us looking for jobs, and companies will not hire them, because of their records. They have their own training programs in place at the present time—I know of several in my area that have their own training programs—and it is because their insurance rates are increased. If you cannot get insurance, I do not think you can operate a vehicle on the road today, so I think there are a lot of safeguards at the present time that protect the general public.

I do not disagree with what Mr. Morin-Strom was saying about the truckers and their driving ability on the roads. I think maybe it has

deteriorated to some degree, and it may be because of the speed limits not being enforced, in my view. I have had truckers come to me with their expression of the issue that maybe everybody should be regulated at the level of 90 kilometres. It does not pertain to this bill, but I think there are a lot of safety factors in place now and I think the ministry is aware of that. Mr. Morin-Strom is maybe getting down into fine-tuning here, but I think there is protection in place in the bill and in the future.

Mr. Chairman: Are there any other comments on Mr. Morin-Strom's amendment to subsection 6(4)?

Mr. Morin-Strom: I would like to get clarification again now on the convictions. The way I read it, in the case of the applicant being a corporation, these are convictions against the officers, or is it the officers and the corporation or is it the officers, the corporation and every driver working for the corporation?

Ms. Kelch: It has to be all three. The commercial vehicle operator's registration covers all of those. If you as a company, you as a driver or you as an officer have had convictions against any or all of those pieces of legislation, they will appear on that record.

Mr. Morin-Strom: It does not seem to read that way. It seems to say "the past conduct of the applicant or, where the applicant is a corporation, of its officers," so if it is a corporation, it sounds to me as if it is just the conduct of its officers "as disclosed by the record of convictions."

Ms. Kelch: My interpretation is that it is all three.

Mr. Morin-Strom: I wonder if we can get an opinion from legal counsel.

Mr. Yurkow: I think I would disagree with the interpretation of the registrar. As I read this, it is the conduct of the applicant or of its officers, and not of its employees. That would be my interpretation, that it would not include the employees.

Mr. McCombe: I would agree with legislative counsel. I think "and" would be preferable. I do not know whether we originally had "and" in there or not. Certainly the intention is that it be the past conduct of the applicant, regardless, and if it is a corporation, you also add conduct of its officers.

1630

Mr. Carrothers: Would it be in order to make a motion to make that change?

Mr. Chairman: You could make an amendment to the amendment.

Mr. Carrothers: It is a rather long way to get around it.

Mr. Chairman: One way to do it would be to deal with the amendment put by Mr. Morin-Strom. Depending on what happens on that vote, we will —

Mr. Carrothers: Fair enough.

Mr. Chairman: Any other comments on Mr. Morin-Strom's amendment to subsection 6(4)?

Mr. Morin-Strom: Mr. Chairman, I would like 20 minutes to get our members.

Mr. Chairman: All right. We will vote at 4:52. If you can try to be here at 4:52, we can get on with the bill.

The committee recessed at 4:31 p.m.

1648

The committee divided on Mr. Morin-Strom's motion, which was negatived to on the following vote:

Ayes

Hampton, Morin-Strom, Wiseman.

Nays

Black, Brown, Carrothers, Dietsch, Miller, Roberts.

Ayes 3; nays 6.

1650

Mr. Dietsch: May I ask a question on sub forms?

The Vice-Chairman: Yes.

Mr. Dietsch: You came in and sat for the chairman. You can do that for a vote?

The Vice-Chairman: I am the vice-chairman of the committee, and I am replacing the chairman, who had to go speak in the House for the rest of the afternoon.

Mr. Dietsch: And then Howie brings in a—

Clerk of the Committee: They are all properly substituted.

The Vice-Chairman: They have been substituted.

Mr. Dietsch: You can do that, can you?

Clerk of the Committee: Everyone is properly substituted.

The Vice-Chairman: Well, I am a member of the committee and I am replacing the chairman.

Mr. Dietsch: I would hate to think that a day went by and I did not learn something, so I had to ask the question.

The Vice-Chairman: That is no problem. It is fine.

Mr. Carrothers: May I move an amendment of my own now?

The Vice-Chairman: Yes, to subsection 6(4)?

Mr. Carrothers: To subsection 6(4), yes.

The Vice-Chairman: Mr. Carrothers moves that clause (a) of subsection 6(4) be amended by deleting the word "or" in the first line and replacing it with the word "and," so that it would read, "the past conduct of the applicant and..."

Mr. Carrothers: It is an amendment to clarify and perhaps avoid any possible ambiguity in the clause.

The Vice-Chairman: Is there any discussion? Any questions or comments?

Mr. Morin-Strom: I would like to move a friendly amendment—

The Vice-Chairman: A friendly one. All right.

Mr. Morin-Strom: —because of the discussion we had previously and the opinion we got from legal counsel that it should say "applicant or, where the applicant is a corporation, of its officers, directors and employees."

The Vice-Chairman: So you want to add the words "directors and employees" after "officers"?

Mr. Morin-Strom: Yes.

The Vice-Chairman: In the second line.

Mr. Carrothers: We have not accepted that as a friendly amendment yet. I think we are expanding the—

The Vice-Chairman: All right. I would suggest that we vote on them separately if they are going to be put as—

Mr. Wiseman: I thought the registrar said all three would be taken into this, and then our legal counsel mentioned just the two. Is that the way it was?

Hon. Mr. Fulton: Could I ask my legal adviser to comment on the amendment?

Mr. McCombe: If the question is the employees, I believe what was said was that the employees are brought into consideration through the commercial vehicle operator's registration record, because if an employee has a conviction while operating a motor vehicle for the carrier, that employee-driver conviction is also entered on the carrier's record and hence becomes part of the applicant's record, which is covered by the present wording.

Mr. Morin-Strom: Only while he was an employee of the carrier? If the carrier has just started up, is just starting up—I mean, this is a new application—would those convictions apply to that new firm if he had convictions in the last four years?

Mr. McCombe: No, it would be on the driver's record. If his record were bad, he would have been suspended, had demerit points or whatever. But the conduct of a driver historically, long before he operated for you, would not go against your record.

The Vice-Chairman: I am going to ask that we vote on the first amendment and then that we can carry on with the discussion of the proposed second amendment, since they are different amendments and they do not deal with the same matter.

On the first one, the change of "or" to "and" appears to be largely a housekeeping matter. All in favour? Carried unanimously.

Mr. Morin-Strom: Might I comment?

The Vice-Chairman: Comment on that? All right.

Mr. Morin-Strom: I will just make a comment, because the chairman is saying it is all largely a housekeeping matter and it is far more than a housekeeping matter. We have legal counsel's view that there are quite different meanings between an "or" or an "and" and it has an actual, tangible impact on the bill.

The Vice-Chairman: I apologize; I withdraw the remark. It is carried unanimously.

Motion agreed to.

The Vice-Chairman: Now the second proposed amendment is by Mr. Morin-Strom. Do you have that in writing?

Mr. Morin-Strom: No, I do not have it in writing right now.

The Vice-Chairman: Could you put it in writing before we vote on it?

Mr. Morin-Strom: I would like to move that we add the words "directors and employees" after "officers."

Mr. Black: Does that include the clerical employees in a corporation?

Mr. Morin-Strom: Yes, if they have driving convictions.

Mr. Black: How about the people who clean on contract?

Mr. Morin-Strom: Do you want me to put "drivers"? Is that more acceptable? If they want to change the wording to make it acceptable, I will be—

Mr. Black: We just want you to be clear on what you are saying. We are not saying we are accepting it; we just want to be clear on what you are saying.

Hon. Mr. Fulton: Was not the motion including the word "directors" already defeated in the amendment on clause 6(4)(a)?

Clerk of the Committee: Yes.

The Vice-Chairman: Then to add a new amendment to put "directors" in is out of order.

Mr. Morin-Strom: We will put an amendment just to put "employees."

The Vice-Chairman: All right, you are withdrawing your other proposed amendment and moving an amendment to add the words "and employees" after the word "officers."

Mr. Morin-Strom: Yes.

Mr. Dietsch: "Of its officers and employees"?

The Vice-Chairman: Yes.

Mr. Wiseman: Can I ask our legal counsel if this muddies the water or clears it up? What is your opinion?

The Vice-Chairman: First I will ask the ministry to respond, and then we can ask for our legal counsel's opinion.

Mr. Carrothers: First-class bog, Mr. Wiseman.

Mr. McCombe: As I explained a minute ago, the convictions related to the operation of commercial motor vehicles of the driver operating for this applicant would be on the applicant's record. If you simply put in the word "employees," we have the problem of whether we are talking about the sweepers or those who load the vehicles. What employees? Is it the driving record of all employees connected with the company while driving their own personal vehicles?

I suggest that simply to put in the word "employee," to bring in an employee's record with regard to driving and all these other matters, would be totally unworkable apart from anything else and would bring in red herrings, things that had no relevance. Large companies may have a couple of nurses on the staff. Their driving records?

Mr. Yurkow: I do not think it necessarily makes it unworkable, but what it would do is to expand the record that has to be given to the registrar to include the personal driving records of all employees, which would include their record while driving their own cars and not necessarily related to their record while driving for that particular shipper. So it expands it. I think Jeff is right in that, if it is a large company, you may have to provide dozens of driving records of all employees.

Ms. Kelch: May I offer some clarification or information? The Motor Vehicle Transport Act, which did originally include employees in its list, is now in the process of removing it for exactly the reasons that are now being put forward.

Mr. Wiseman: I would hate to have us take in the clerical workers. I know my friend across the way has said it may be some of the sweepers or whatever, but I think what my colleague is after is to get the drivers plus the officials and so on. Maybe he could amend that and perhaps the ministry will accept that.

Miss Roberts: Just as a point of clarification for myself—and maybe some of the ministry officials can help us out with respect to this—I think I heard today, and I have heard on other occasions, that when they get their commercial vehicle operator's registration, is that not part of the certificate of competence or whatever is involved besides this application? Is there not something whereby the drivers are looked at as well?

1700

Ms. Kelch: Yes, and that is, I think, our point.

Miss Roberts: If you would just sort of clear that again for someone who has not said it appropriately, so a company can think through it.

Ms. Kelch: For anyone to be able to make an application under the Truck Transportation Act, he does have to be registered and have a CVOR number. That record includes the record of individual drivers as well and, as Mr. McCombe has indicated, the employees of the firm who are driving commercial vehicles. So those records would be included.

I guess that is why we thought it was included here, saying the past conduct of the applicant. The applicant is normally the firm, so those drivers for the firm would be included in that firm's CVOR record.

Miss Roberts: If I might, just as a supplementary, what you are saying to me is that the concern my friend has is addressed: It is the drivers. It is addressed through the CVOR and is brought into this section through that, because the applicant has to have that certification.

Ms. Kelch: Yes.

Miss Roberts: And therefore the drivers and the employees who are what I would call the driving employees are graded or have passed whatever is necessary to meet certain qualifications that are put forward by the ministry..

Ms. Kelch: Their full record of driving in the province is included in the record that we would evaluate before the applicant would be deemed fit or unfit.

Miss Roberts: And I heard you say their full record of driving in the province?

Ms. Kelch: Correct.

Mr. Wiseman: Our colleague put in "employees." I wonder whether if it was "employee drivers," that would clarify it. I do not want to see a sweeper have his or her record come out, or a janitor or a clerical worker have his records go forward.

The Vice-Chairman: Unless it's a mobile sweeper.

Mr. Wiseman: Okay. I just thought, so we do not get bogged down in this, would that clarify it? The registrar says it is in another spot, but so that we could get moving on, perhaps we could—

Hon. Mr. Fulton: We do not think it is necessary. That is the whole point of the CVOR, which passed the Legislature some time ago. Those drivers are already caught in that process. If you are going to start talking about employee drivers, what about the guy operating a parts truck or some such thing as that, where he could do it without the same class of licensing? It just gets so complicated, unnecessarily.

Mr. Wiseman: Not being a lawyer, I just felt that if you look at subsection so-and-so and then you are bouncing back and forth, and our lawyers have both come up with a little different interpretation here, and if they are

having a little trouble, then why not make it a little easier for individuals who may read this in the future? If putting in that "driver employees" or "employee drivers" would clarify that, why are we taking so long and why do we not move on?

Mr. Black: There is a good question.

The Vice-Chairman: Are you moving an amendment?

Mr. Wiseman: I will.

The Vice-Chairman: You want to add the word "driver" before "employees."

Mr. Wiseman: "Commercial vehicle drivers."

The Vice-Chairman: "Commercial vehicle drivers?" Do you want to put that in writing, please?

Mr. Carrothers: While I certainly understand and can appreciate Mr. Wiseman's desire to make sure that it is absolutely clear, I would want to point out to him that what he is doing is probably going to make it less clear. As I understand it, in order to be driving their commercial vehicles, these drivers have to have licences, which already means they have to have their CVOR check. By throwing in words like "employees" or however you are going to discern it, you do get into the point, and perhaps the chairman's point was well taken, that someone driving a sweeper around the place might be considered a driver. You have just added a layer of unnecessary checking. Therefore, I cannot support this. The drivers' safety record is already taken into account without this kind of amendment.

Mr. Morin-Strom: The way I read this clause—

The Vice-Chairman: Do you mean the subamendment?

Mr. Morin-Strom: Yes, the subamendment. In determining the fitness of the applicant, the registrar shall consider the past conduct of the applicant, and in this case we are suggesting it should also include the drivers of the commercial vehicles for the applicant. The ministry people like to talk about the fact that they have a commercial vehicle operator's registration certification back in subsection 6(3), but this subsection 4 is where it says what the registrar shall consider. It does not say to go back and look at what is in subsection 3 and consider that.

I think we are putting the safety of the highways at risk, because we are limiting the consideration of the registrar to the convictions of the applicant and its officers in this case, and we are not allowing the registrar to look at the numbers of convictions that have been obtained by the various drivers of the commercial vehicles who are being used for this applicant. I think this is another example of the weakness of this bill when it comes to safety.

I remind the minister that the previous bill that was introduced in the last legislature was much stronger in its language on what was to be evaluated under fitness. The minister has weakened the safety provisions of this bill quite considerably, and I guess that is an issue which is on the government's hands in the future.

Mr. Dietsch: With all due respect, would you read the amendment that we are going to be voting on?

Clerk of the Committee: The subamendment moved by Mr. Wiseman reads "that the amendment be amended by inserting the words 'commercial driver' immediately before the word 'employees.'"

Mr. Dietsch: So the final wording would be "of its officers and commercial driver employees."

The Vice-Chairman: We will be voting first on the amendment to the amendment to add the words "commercial driver" immediately before the word "employees." All those in favour? Three. All opposed? Six.

Motion negatived.

The Vice-Chairman: I now call the question on the amendment to add the words "and employees" after the word "officers." All in favour? Two. Opposed? Seven.

Motion negatived.

The Vice-Chairman: We are now going to vote on subsection 6(4), as amended. All in favour? Opposed, if any? Okay, six to three. It is carried.

We have another amendment before us:

Mr. Morin-Strom moves that section 6 be amended by adding thereto:

"(5) Subsection 2 does not apply where the application is for a licence to carry goods of a nature and on a scale that had been exempt under the Public Commercial Vehicles Act and the applicant was engaged in that transportation during the six months immediately preceding the first day of July, 1987."

Any explanation?

1710

Mr. Morin-Strom: The explanation is that I think we should have some kind of grandfather clause here in terms of the licensing of trucking firms in Ontario. This provides that long-existing firms will be able to continue their licenses without having to have this evaluation taken out specifically on them.

The Vice-Chairman: Does the ministry have any response?

Hon. Mr. Fulton: I am still not quite clear on what his meaning is.

Mr. Black: It is probably designed to improve safety on the highway.

Mr. Morin-Strom: It is designed to help out those small family operations that have been in business on a long-standing basis for years—decades, as a matter of fact. They have been recognized as licensed carriers, and I do not think they should suddenly have to go through a process that I think is unnecessary for people who have long-established records and have been operating safely in the field.

Mr. Carrothers: I wanted to start off by saying that I am all in favour of grandfathers. Feeling like one myself at this point, I think Mr.

Morin-Strom has a point here. There might be some grandfathering situation. We are creating a six-month period. I would point out to Mr. Morin-Strom, however, that he is creating a grandfather clause for a period of six months from July 1, 1987, which I do believe would be up at the end of next month. At the rate this is going, the grandfather clause would be rendered negatory.

Perhaps I could move a rather friendly amendment, if I might, and suggest that the words, "the first day of July, 1987" be struck from Mr. Morin-Strom's amendment and replaced with the words, "the day this act comes into force," so we would create a six-month grandfathering situation. I am sure that is what my friend intended.

The Vice-Chairman: Do you accept that as a friendly amendment?

Mr. Morin-Strom: Yes, I do.

Mr. Carrothers: Could we perhaps put November 30 as the date of intent that this act comes into force?

Mr. Morin-Strom: It would make it self-contradictory, but—

The Vice-Chairman: The friendly amendment is that we say "immediately preceding the day this act comes into force." Okay?

Mr. Carrothers: We hope it will be in this century.

The Vice-Chairman: Any further comments or discussion?

Mr. Black: Can we hear comments from the minister?

Hon. Mr. Fulton: Could you comment, Jeff, especially with reference to subsection 16(8)?

Mr. McCombe: I guess the question that arises is whether it is logical to exempt somebody who has no experience operating under the controlled environment the Public Commercial Vehicles Act required. He was exempt; therefore, he does not have that experience. Yet in subsection 16(8), those who have operated for the past five years as PCV licensees will be required to have a certificate of competency within 18 months. Of course, part of the reason for that is to ensure that these people, notwithstanding that they have been on the roads, have some knowledge of the dangerous goods transportation regulations as required by mastering this book put out by the ministry and undergo the test which does examine people on those subjects. The lack of grandfathering is intended to improve highway safety and knowledge of the laws.

Mr. Morin-Strom: We went through that already today. We saw that there were three questions having to do with dangerous goods in this application, of which two have already been answered by the ministry staff. This does not have an effect of safety consideration for the carrying of dangerous goods.

Ms. Kelch: But Mr. Morin-Strom, we also indicated that the competency test is a very integral part of that application. You do not have that in front of you.

Mr. McCombe: Your exemption is from the certificate of competency, not from the safety test.

Ms. Kelch: Not from the application.

Mr. Morin-Strom: I am suggesting that the filling out of this application form is an unnecessary burden on long-time small businesses in this field. This is a form that basically requires someone to learn what the correct answers are and to fill them in. Now, for a big corporation that is quite easy to do, and for a new operator, fine, we are going to require that; but for a guy who is of long standing in the field, why do you want to put that burden of him of having to go out and fill in an administrative form, as you call it, which has little or no relevancy to safety?

Mr. McCombe: That form has nothing to do with the certificate of competency, which is what your motion is about. You are exempting them from a certificate of competency, not from the entry test on fitness.

Mr. Carrothers: On a point of order, Mr. Chairman: Does this discussion really have anything to do with the proposed amendment? We have discussed the test quite extensively and we did have a vote on it previously in terms of the basic principles of that test.

The Vice-Chairman: That is a very good point of order.

Mr. Black: I am confused, Mr. Chairman, and it is not unusual for that to happen, but I wonder if Mr. Morin-Strom or someone from the ministry could clarify. It seems to me that what he is doing with this motion is exempting people from a certificate of competency. Is that correct or do I misinterpret? I wonder if we can get some advice from our legal counsel, because if that is in fact what the New Democrat member of this committee is advocating, I find that reprehensible, to say the least, or worse.

Miss Roberts: It is only for a six-month period.

Hon. Mr. Fulton: That is my understanding, but perhaps legal counsel would like to clarify.

Mr. Yurkow: That would be my interpretation of it.

Hon. Mr. Fulton: For a six-month period.

Mr. McCombe: No, you are exempted. If you are in operation for six months, you are exempted for life.

The Vice-Chairman: The exemption is not for the duration of six months. It is if you are in operation for six months prior to the act coming into force. That is the purport of the amendment.

Mr. Black: Perhaps Mr. Morin-Strom did not understand the effect of his motion. That could not be what he was intending.

Mr. Wiseman: Did our legal counsel—

Interjection: It could be.

Mr. Wiseman: —say the same there?

Interjections: Yes.

Interjection: It must be an error.

The Vice-Chairman: It could be.

Mr. Black: You have got some bad advice, Karl. Obviously, someone has—

Mr. Morin-Strom: It could be.

Mr. Black: You should go outside—

Mr. Wiseman: Do you want to adjourn for five to talk to your researcher?

Interjection: Do you want to take 20 minutes, Karl?

The Vice-Chairman: No. Do you wish to proceed with the amendment?

Mr. Morin-Strom: I would like five minutes.

Interjection: I bet you would.

Mr. Carrothers: We agree to just five.

The Vice-Chairman: All right. Is that acceptable to the committee?

Interjections: Yes.

Mr. Dietsch: I would hate to think that Karl would go off. We do not want him to make a mistake.

The Vice-Chairman: We will adjourn for five minutes.

The committee recessed at 5:17 p.m.

1723

Mr. Morin-Strom: I think the wording of the amendment is correct, but perhaps we can get counsel's position on it.

What we have is two situations, in one of which, if you are licensed now, you have an 18-month period to get the competency. If you are not licensed, then you have to get the certificate of competency before you can apply for an operating licence.

However, there is a third situation, and that is trucking interests that are in operation today under the old CVOR that did not require licensing. This refers to applications for a licence to carry goods of a nature and a scale that had been exempt under the Public Commercial Vehicles Act before. There are types of trucking operations that did not require licensing previously. Why should we force them out of business immediately and not grant them the same 18-month period that those who previously had to have a licence were being granted?

So our concern has to do with trucking operations going on today. As we have in this provision—we talked about the applicants for a licence to carry goods of a nature and on a scale that had been exempt under the old act. We are talking about types of trucking operations that did not require a licence under the old PCVA. Those operations are in operation today, and we do not believe that on the day this act is enacted they should be tossed out of business.

Mr. Carrothers: I wonder if I could get some clarification. There is some comment that they would be forced out of business immediately, is that correct? The minister may not have a transition period?

Mr. McCombe: No. Part of the planning on all this—You will notice that the three bills you have dealt with, Bill 86, Bill 87 and Bill 88, come in on proclamation, which means parts thereof can come in on proclamation. The proposal has always been that the CVOR provisions and the competency provisions would be brought in months ahead of the proclamation of subsection 3(1) of this bill, which is the one that says you have to have a TTA licence.

So the capacity for the ministry to issue, and for those who need a certificate of competency to obtain the material, to take one or more tests—and when you pay one fee, you get, I think, endless runs of tests but certainly more than one—that will all be in place prior to subsection's 3(1) coming into force. So there is no reason why anybody should have a problem, by virtue of this requirement, in getting himself licensed before that magic date, the implementation date.

Mr. Carrothers: So the contention is incorrect?

Mr. McCombe: Yes.

Mr. Carrothers: On that basis, even though I like my amendment, with the clarification, I am going to have to withdraw support for Mr. Morin-Strom's amendment here. It has a different import than I had understood initially.

Mr. Morin-Strom: I guess we are going to have to get some clarification here. This bill does not provide that assurance to those truckers. We are getting the view from the ministry as to some delay in the implementation date, but I have not heard anything specific on how much time there is going to be, and in particular, whether it is going to be 18 months. Why are we going to give an 18-month exemption for those who did require licences previously under the old act, and not assure that there is the same kind of provision for those trucking operations that have been long standing but did not require licensing previously? I still find it discriminatory.

Mr. McCombe: I believe you are suggesting now an 18-month exemption, which is not what your motion was about. Your motion was a lifetime exemption from the safety component, if you like, of a certificate of competency. You are now talking about when the requirement for a certificate comes into play, rather than there being no requirement whatsoever. At the heart is the certificate of competency and the preparation therefor. The testing is primarily the safety aspect, and that is a policy issue as to whether you want somebody tested when he first gets into the licence regime or 18 months down the road.

The one difference about the person who has been exempt in the past is that he has no experience in living under the regime of the PCVA, the TTA or the Motor Vehicle Transport Act. In other safety aspects he has, presumably, but his knowledge of safety and of the law is expanded by going through this routine, which is not all that onerous.

1730

The Vice-Chairman: The amendment referred to subsection 6(2).

Mr. Black: I think the way Mr. Morin-Strom has expressed his concern now is one that is worthy of some consideration. I wonder if we might ask the ministry to look at that question and come back with a suggestion as to whether an amendment is necessary, and if so, where it might best fit; not so that we exempt people for ever and ever, but if it is feasible to do so, that we not treat two different groups differently if there is no need to. I think that is what you are saying, Karl.

The Vice-Chairman: Would it be acceptable to you, Mr. Morin-Strom, to stand down your amendment until the ministry has an opportunity to respond tomorrow or in our next session?

Mr. Morin-Strom: Yes.

Mr. Vice-Chairman: The amendment is stood down. We will have to stand down the final vote on section 6 then as well.

Mr. Carrothers: This is an addition to section 6.

Clerk of the Committee: If it passes, it would be part of section 6.

Mr. Carrothers: So we pass each subsection and then the whole section?

Clerk of the Committee: If this passed, you would then have to pass section 6 as amended.

Mr. Carrothers: I see.

The Vice-Chairman: Not unless you originally, at the beginning, had said you were going to deal with the subsections.

Mr. Carrothers: We passed each subsection, I thought, up to this point.

The Vice-Chairman: But then you have to move section 6 as amended.

Mr. Carrothers: I see. Okay.

The Vice-Chairman: All right, we will stand that down.

Section 7:

The Vice-Chairman: Mr. Morin-Strom moves that subsection 7(1) be amended as follows:

"On being satisfied of the fitness of an applicant to hold a licence, the board shall give 30 days' notice of the intention to issue an operating licence to the applicant in such terms as the board finds to be consistent with the fitness and the capacity of the applicant to carry out the business proposal."

Mr. Morin-Strom: I think, again, we should have the board issuing the fitness, and in particular, we should have provisions for changing the terms of the licence that is going to be issued so it is consistent with the fitness and the capacity of the applicant to carry out the business that he plans.

We should be taking into consideration the considerable testimony we have had before the committee that applicants should not be given blank cheques in terms of operating trucks across the province of Ontario, but instead, those licences should be based on the ability of those applicants to carry out a given level of business, with evidence that they have the equipment, the financial wherewithal to do so and the ability to provide adequate service to the public and to the shipping community. It is foolhardy to be giving out wide-open applications to companies that do not have that wherewithal to cover the province as a whole.

As I understand the existing writing of the bill, there is no ability even for the registrar—in my view, it should be the board—to evaluate what the capacity of the applicant is and what the specific—

Mr. Carrothers: On a point of order: I thought the nature of the test and who was going to be carrying it out has already been decided in subsection 6(1). I am wondering if it is really in order to discuss that when we are now discussing the kind of notice which should be given when a licence is issued.

The Vice-Chairman: That is fine. Just before you go ahead, Mr. Morin-Strom, the minister has a comment or a question.

Hon. Mr. Fulton: I think Mr. Carrothers was getting at the issues I wanted to raise. The word of significance in Mr. Morin-Strom's amendment, is the repeated use of the word "board." We resolve that "registrar" versus "board" is really the essence of what this whole piece of legislation is all about. You people have made the decision that the word "registrar" is appropriate. I would question whether this motion is at all in order.

The Vice-Chairman: I am advised that is indeed correct. The word "board" should not be being put forward here since that matter has been dealt with previously in the debate in other sections. Rather, this section deals with the function. The amendment thus deals with the additional wording at the end of the amendment. That is the matter that should be before us now.

Mr. Morin-Strom: I would ask whether, in fact, we have made a decision to this point? Would you provide the specific section where it says who is going to issue the fitness?

The Vice-Chairman: On page 7 of the bill, subsections 4(1), 4(2), 4(4), 4(5), 4(7), and 4(11). Mr. Wiseman put forward an amendment to change the word "registrar" in those places to the word "board." A debate took place and the amendment was defeated.

Mr. Morin-Strom: I will have to change my amendment.

The Vice-Chairman: I would rule that the proposed amendment of the word "registrar" to "board" is out of order, but the rest of the amendment is in order. If you debate the function, that is in order.

Mr. Morin-Strom: I will change my amendment so it reads "registrar" instead of "board" in both places. We can get to the essence of what the registrar has to do.

The Vice-Chairman: The minister, I believe, still has another question of order.

Hon. Mr. Fulton: If my memory serves me correctly, and perhaps the secretary can clarify this, I understood that the reference to the business plan or the business proposal has also been determined by this committee.

Mr. Black: That was my point.

The Vice-Chairman: On what section?

Hon. Mr. Fulton: I am looking for, I think it was today, subsection 6(4).

Mr. Carrothers: The amendment put forward by Mr. Morin-Strom was defeated earlier in this session.

Mr. Morin-Strom: I will change the wording of the last phrase.

The Vice-Chairman: I would suggest, Mr. Morin-Strom, if you are accepting that that is the case, you reword your amendment.

Mr. Black: Or withdraw it completely and just move on.

Mr. Carrothers: That would be the best suggestion in the spirit of co-operation. How wise Mr. Black is these days.

Mr. Morin-Strom: I have it. Do you want me to read it?

The Vice-Chairman: Perhaps counsel could clarify for the committee, if, indeed, the function that is proposed in this amendment was dealt with in subsection 6(4).

Mr. Yurkow: Not in specific terms, but by implication in that the registrar could not decide the capacity without the distance plan, and since that motion was defeated, there is not anything left for the registrar to make a finding on. In other words, as it stands, it does not make sense in view of what has gone on earlier.

1740

The Vice-Chairman: Okay. Mr. Morin-Strom, are you staying with your amendment? In which case, I think I will have to rule it out of order.

Mr. Morin-Strom: I am going to move a new amendment.

The Vice-Chairman: All right. You are withdrawing this amendment?

Mr. Morin-Strom: Yes.

The Vice-Chairman: What is your new amendment?

Mr. Morin-Strom: Do you want me to read the whole thing or the end of it?

The Vice-Chairman: No, just the important words after the word "applicant."

Mr. Morin-Strom: "...with the fitness and the capacity of the applicant to carry out his transportation service in accordance with the law and the public interest," which is wording we have just passed in clause

6(4)(a): "...operated in accordance with the law and the public interest."

The Vice-Chairman: Subsection 7(1) would read—

Mr. Morin-Strom: We agreed that the fitness will be evaluated on the basis of "accordance with the law and the public interest," and I think that should be put into subsection 7(1) as well.

The Vice-Chairman: Mr. Morin-Strom's amendment, then, would read as follows: "On being satisfied of the fitness of an applicant to hold a licence, the registrar shall give 30 days' notice of the intention to issue an operating licence to the applicant in accordance with the law—

Mr. Morin-Strom: "...in such terms as the registrar finds to be consistent with the fitness and the capacity of the applicant to carry out the transportation service in accordance with the law and the public interest."

The Vice-Chairman: Okay. Can we have that in writing, please?

Hon. Mr. Fulton: For clarification, Mr. Chairman, is not the reference to the term "fitness" redundant in so far as they cannot get the application to the point of being if they have not proven fitness?

The Vice-Chairman: I think we need to have the motion in writing before counsel can comment on that.

Interjection.

The Vice-Chairman: We will just wait for counsel.

Interjection: Talk about moving along.

The Vice-Chairman: We will ask counsel if he can comment on this question of whether the reference to "fitness" is redundant.

Mr. Yurkow: I think it is redundant. It seems that the amendment just says the same thing that is there now in different or more words. I do not see any change in effect.

Mr. Morin-Strom: You do not see any change?

Mr. Yurkow: No.

Mr. Morin-Strom: You do not see any substance to the amendment?

Mr. Yurkow: That is correct.

Interjection.

Mr. Dietsch: I think the words are, "I'm crushed."

Mr. Morin-Strom: I will explain what I think the substance of the amendment is, in terms of a change. My understanding is that the registrar now does not have the power to change the terms of the licence that has been applied for. You either get a licence or you do not get a licence. This allows the registrar to determine that this applicant has the capability to serve a given potential type of product or given region of the province, and the registrar can specify, then, "This is what the applicant is fit and capable of

serving," and issue the licence on that basis rather than having to accept the terms of the licence as it has been applied for.

Mr. Yurkow: All subsection 7(1) does is oblige the registrar to give 30 days' notice of intention. What the amendment does is deal with what the notice might say. It does not specifically give the registrar a power.

Mr. Carrothers: I think it also deals with to whom the notice is to be given.

Mr. Yurkow: That is correct.

Mr. Carrothers: Then I guess I would have to ask the counsel where I would best put in this type of right for the registrar.

Miss Roberts: Section 6.

Mr. Carrothers: Sections we have already passed.

The Vice-Chairman: Order. No, we have not. We have stood them down.

Clerk of the Committee: No, we only stood down subsection 6(5).

The Vice-Chairman: We stood down 6(5), that is right. I think the ministry has some comments.

Mr. Hobbs: I just have one comment here. In view of the discussion that took place earlier about the registrar using discretion with respect to the fitness test, I wonder whether Mr. Morin-Strom really envisages having the registrar exercise judgement in determining what the public interest is when we have public interest tests that are being handled by the board.

Mr. Morin-Strom: It was you who put in the term "in accordance with the law and the public interest" in your original wording and that has been accepted by the government, so there is a consideration of the public interest involved in the registrar's judgement on the fitness test. It was not my preference to give it to the registrar, but you have given it to the registrar. At this point, if it is going to be the registrar, let's give the registrar some power to do something, not just a blank cheque.

Mr. Hobbs: We did not use it in the context of this clause.

Mr. Carrothers: You used it right there in clause 6(4)(a).

Miss Roberts: I just want to comment that this is a notice of intention to issue a licence. That is what section 7 deals with. I understand what my friend is saying very clearly, but this is intention, notice to be given, to whom it is to be given. I am sure other people can explain it better than I. This just is not the appropriate place for that particular amendment to be put forward at this time. That is my only comment.

Mr. Carrothers: I would also add to my colleague's comments that in fact Mr. Morin-Strom's amendment is removing the requirement, as I understand his amendment, to publish in the Ontario Gazette notice of intention to give a licence. That would then render useless subsection 7(4), which does allow an opportunity for those who might feel there was some impropriety or some false information.

If Mr. Morin-Strom would like to look down the page, that whole section would be rendered impossible because there would be no public notice of intention to issue a licence. So I think what he is doing is surely contrary to what the public interest is here. I certainly do not feel I could support his amendment.

The Vice-Chairman: As far as I am concerned, the amendment is in order and I think we should vote on it.

Mr. Morin-Strom: I think the counsel has made a valid point, though, that this section does seem to focus on the issuing of the notice. It is my intent not just to tie this to the notice; my intent is to give the registrar the right to determine the terms of the licence to be issued. I do not see specifically where that licence is specified.

The Vice-Chairman: It sounds to me as if you are talking about putting in another amendment, additional to subsection 6(5)—subsection 6(6), I suppose—in that section. It has not been carried yet.

Mr. Morin-Strom: Okay, I will withdraw this amendment.

The Vice-Chairman: All right. This amendment has been withdrawn. Is there any other discussion on subsection 7(1) of the bill?

Mr. Carrothers: Could we have the vote?

The Vice-Chairman: All in favour? Opposed? Carried.

1750

Mr. Chairman: I understand we have finished subsection 7(1). Are there any comments or questions on any other subsections in section 7?

Mr. Wiseman: Can I just ask about subsection 7(2) where the registrar says the applicant is not fit and turns it over to the Licence Suspension Appeal Board under the act. I think that is the first time I have heard of that board. How is it made up?

Hon. Mr. Fulton: It has been around for years.

Mr. Wiseman: Yes, but I have never heard of it.

Hon. Mr. Fulton: It happened under the previous administration.

Mr. Wiseman: How is it made up? How many people sit on it?

Hon. Mr. Fulton: I am not sure it is relevant to the clause in question. I would be happy to provide our friend with that information, though, if he deems it pertinent.

Mr. Wiseman: I just wondered whether they have the authority to amend what the registrar has approved and so on under that section. I would just like to know how many sit on that board, how often they meet and how often they have overturned a decision of the registrar.

Mr. McCombe: Perhaps I could help. The board is created under section 31 of the Highway Traffic Act. It consists of three or more members appointed by the Lieutenant Governor in Council. One of them shall be

designated as chairman, etc.

The board has been operating for years. It deals with all decisions regarding appeals regarding drivers' licences and vehicle permits, including the registrar's review of a carrier's safety record and a decision whether the permits on that carrier's vehicle should be suspended or cancelled. There is an appeal to this body, which is as formalized a board as the Ontario Highway Transport Board. For that matter, there are regulations establishing its rules of procedure and so on.

Mr. Chairman: I think, Mr. Wiseman, the minister has an answer to your question.

Hon. Mr. Fulton: There are 10 members on the LSAB.

Mr. Wiseman: Have they overturned the registrar's decisions on many occasions?

Hon. Mr. Fulton: Yes, at times.

Mr. Wiseman: Is this the final appeal, then, or can they appeal to the minister about that? If this board upholds the registrar or changes it and the registrar is still not satisfied, can either one appeal to the minister to make the final decision or is this appeal board the final—

Mr. Hobbs: After the board, judicial review is the next step.

Hon. Mr. Fulton: If Mr. Wiseman writes the minister a letter asking the minister to intervene to reinstate somebody's licence that has been removed under the Highway Traffic Act, is this where I tell him I do not have that power to do that?

Mr. Chairman: Mr. Dietsch.

Mr. Dietsch: I think the minister just answered my question. I wondered what type of intervention there was. I think he just answered that question.

Mr. Morin-Strom: During the public hearings, it was recommended to our committee that it should be the OHTB or a panel of the OHTB handling the appeal. Why have you decided to use the Licence Suspension Appeal Board rather than the OHTB to handle it?

Mr. Hobbs: The OHTB handles matters that are related to economic regulation. It is not a safety board and never has been.

Mr. Morin-Strom: Would the OHTB not have a greater understanding of the trucking industry than the Licence Suspension Appeal Board?

Hon. Mr. Fulton: There is experience with the trucking industry within the LSAB.

Mr. Morin-Strom: Is it your intention to phase the OHTB out of the act completely?

Hon. Mr. Fulton: No.

Mr. Morin-Strom: Or to eliminate the OHTB?

Mr. Hobbs: No, you can see that from the act.

Mr. Wiseman: On clause 7(4)(a), would it be possible for someone who wanted to stop a new person coming in, a new applicant, to make an allegation that he or she gave false information and hold that applicant up for quite a considerable length of time? I am thinking of the Ontario Municipal Board, where some people have held up a developer for a fair length of time. When the board met, sometimes they showed up and sometimes they did not, and they put in frivolous complaints that could be overruled.

Mr. Hobbs: Subsection 7(5).

Mr. Wiseman: Subsection 7(5) covers that. I was wondering how long it takes, once you have heard it and then somebody comes in and says the fellow or whoever it was gave false information. How long is it going to be, a couple of months or so, till the board meets again and deals with it? It could just be a way of holding up an applicant, but you say that would not happen, does not happen.

Mr. McCombe: It is anticipated that the type of evidence that would come in would be a certificate from the registrar of motor vehicles in Kansas showing convictions that were not disclosed in the application. It is pretty easy to say there is or is not something frivolous or vexatious or something serious.

Apart from subsection 7(5), there is section 8, which is intended to deal with some things of that nature. There is a capacity there to give a temporary licence pending determination of that. Generally, the temporary is not the route you want to use when fitness is the issue, as distinct from public interest, but it is not contemplated that this is something that would be tying somebody up for a long period of time.

Mr. Chairman: Okay, Mr. Wiseman?

Mr. Wiseman: All right.

Mr. Chairman: Any other comments on subsection 7(2)?

Mr. Morin-Strom: Does the Licence Suspension Appeal Board have the experience to be able to handle concerns relating to the public interest?

Mr. Hobbs: This is not public interest.

Ms. Kelch: This is fitness.

Mr. Hobbs: Yes, it does, and in addition, we will achieve that in future more so by cross-appointments between the OHTB and the Licence Suspension Appeal Board.

Mr. Morin-Strom: Will there be provision for hearings and testimony in front of the Licence Suspension Appeal Board?

Mr. Hobbs: It is all set out.

Mr. Morin-Strom: Because I think there is a public interest concern, given what has already been passed in clause 4(a).

Mr. Hobbs: The procedures under which the Licence Suspension Appeal

Board operates are set out in legislation and in regulation.

Mr. Morin-Strom: Thank you.

Mr. Chairman: We have to deal with subsection 7(2). All those in favour? Carried.

Are there any other comments or questions on the rest of section 7, subsections 3 through 14?

Mr. Carrothers: Perhaps we can have a vote.

Mr. Chairman: I asked that we not tease the bears.

Mr. Carrothers: I understand that. It did not appear that there were any comments.

Mr. Chairman: The next amendment that has been prepared is in section 9.

Mr. Black: Can we vote on sections 7 and 8 together then?

Mr. Chairman: We could. Are we waiting to deal with the question on the balance of section 7? It is a long section.

Mr. Morin-Strom: I would like to stop after subsection 7(3).

Mr. Chairman: All right. All those in favour of subsection 7(3)? Carried.

We will next begin with subsection 7(4). That will be tomorrow afternoon.

Clerk of the Committee: You have agreed to come back to this amendment to subsection 6(5).

Mr. Chairman: We will be dealing with subsection 6(5) first tomorrow afternoon and then move on to subsection 7(4). The committee is adjourned until tomorrow afternoon after routine proceedings.

The committee adjourned at 6 p.m.

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STANDING COMMITTEE ON RESOURCES DEVELOPMENT

ONTARIO HIGHWAY TRANSPORT BOARD AMENDMENT ACT
TRUCK TRANSPORTATION ACT

THURSDAY, NOVEMBER 10, 1988



STANDING COMMITTEE ON RESOURCES DEVELOPMENT

CHAIRMAN: Laughren, Floyd (Nickel Belt NDP)

VICE-CHAIRMAN: Wildman, Bud (Algoma NDP)

Black, Kenneth H. (Muskoka-Georgian Bay L)

Brown, Michael A. (Algoma-Manitoulin L)

Dietsch, Michael M. (St. Catharines-Brock L)

Grier, Ruth A. (Etobicoke-Lakeshore NDP)

Marland, Margaret (Mississauga South PC)

McGuigan, James F. (Essex-Kent L)

Stoner, Norah (Durham West L)

Tatham, Charlie (Oxford L)

Wiseman, Douglas J. (Lanark-Renfrew PC)

Substitutions:

Carrothers, Douglas A. (Oakville South L) for Mrs. Stoner

Collins, Shirley (Wentworth East L) for Mr. Black

Cousens, W. Donald (Markham PC) for Mr. Wiseman

Miller, Gordon I. (Norfolk L) for Mr. Brown

Morin-Strom, Karl E. (Sault Ste. Marie NDP) for Mrs. Grier

Clerk: Mellor, Lynn

Staff:

Yurkow, Russell, Legislative Counsel

Witnesses:

From the Ministry of Transportation:

Fulton, Hon. Ed, Minister of Transportation (Scarborough East L)

Hobbs, David G., Deputy Minister

Kelch, Margaret, Assistant Deputy Minister, Safety and Regulation

McCombe, C. Jeffares, Director, Office of Legal Services

Radbone, Steve, Manager, Truck Transportation Office

LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON RESOURCES DEVELOPMENT

Thursday, November 10, 1988

The committee met at 3:50 p.m. in committee room 1.

TRUCK TRANSPORTATION ACT
(continued)

Consideration of Bill 88, An Act to regulate Truck Transportation.

Mr. Chairman: The standing committee on resources development will come to order as we continue our investigation of Bill 88, An Act to regulate Truck Transportation.

Section 6:

Mr. Chairman: We we adjourned yesterday, we were on section 7, but we had agreed to go back to section 6, where Mr. Morin-Strom had an amendment which would have added subsection 5 to section 6. It was stood down to allow some comment today on subsection 6(5). Mr. Morin-Strom, did you wish to comment on that?

Mr. Morin-Strom: Are we doing subsection 6(5) or are we continuing with subsection 7(4)?

Mr. Chairman: Subsection 6(5).

Mr. Morin-Strom: We are going back to section 6 now?

Mr. Chairman: Yes.

Hon. Mr. Fulton: Mr. Morin-Strom, we stepped this down for you yesterday in order to bring back the response. The response is available here.

Mr. Morin-Strom: This is the proposed government motion?

Ms. Kelch: The two of them go together.

Mr. Chairman: On subsection 6(5), to deal with the government amendment would of course require, because there is an amendment before the committee now, that if Mr. Morin-Strom is satisfied with this one, he withdraw his, or we can proceed and deal with Mr. Morin-Strom's amendment, whichever.

Mr. Morin-Strom: I have not had time to look at this or assess it.

Mr. Dietsch: Do you want to adjourn?

Mr. Morin-Strom: No, I am willing to address this one, if you want to go through it. Can I withdraw mine temporarily and it can always be put in afterwards, or not?

Mr. Cousens: Can somebody explain what we are doing?

Mr. Chairman: Yes, can somebody from the government speak to the proposed amendment?

Mr. Carrothers: There are two proposed amendments. One is subsection 6(5) and there is one to a subsequent section. What the import would be is that the amendment to subsection 6(5) would create an exemption for those who have been operating in an area where they have not had to have a licence under the Public Commercial Vehicles Act. Then there will be an amendment on subsection 16(9)—I guess we will do that when we get there—which would essentially limit that exemption to an 18-month period. Essentially, these people would be given the same right of 18 months to relicence as was being discussed yesterday, which I believe was the import of what you were after. If that is acceptable, maybe I could move the amendment.

Mr. McGuigan: What would be the examples of those people under this heading?

Hon. Mr. Fulton: When they first haul from the farms. There are only a couple of them. Is there another one here?

Ms. Kelch: No, it is the first haul from the farm.

Mr. Cousens: I am sorry. I did not hear the registrar.

Ms. Kelch: It is goods that are moved on the first haul from the farm in a vehicle that has more than three axles. Currently, under the Public Commercial Vehicles Act, those individuals are not regulated. They will be under the new legislation. Mr. Morin-Strom wanted to make sure that the same rules applied to them in terms of the time to complete their competency test.

Mr. Carrothers: Is it in order to move the amendment before we debate it, Mr. Chairman?

Mr. Chairman: No, because Mr. Morin-Strom's is still before us. Mr. Cousens.

Mr. Cousens: I will defer until Mr. Morin-Strom deals with it. I have a number of questions.

Mr. Morin-Strom: Yes, I am pleased with the motions being proposed by the government. I am pleased that we did not rush through and bypass this issue, which we almost did yesterday, and were able to address it fully. I will withdraw mine. Thank you.

Mr. Chairman: All right. Thank you, Mr. Morin-Strom. In the spirit of co-operation—

Mr. Carrothers: In the great spirit of co-operation, Mr. Chairman, as you lectured us yesterday, I would make the following motion.

Mr. Chairman: Mr. Carrothers moves that section 6 of the bill be amended by adding thereto the following subsection:

"(5) Subsection 2 does not apply where the application is for an operating licence to carry goods of a nature and on a scale that had been exempt under the Public Commercial Vehicles Act and the applicant was engaged in the transportation during the six months immediately preceding the date of the application."

Mr. McGuigan: I have a question.

Mr. Chairman: Before you do, did you wish to speak to that, Mr. Carrothers, or do you feel it has been addressed?

Mr. Carrothers: As explained, in this amendment and the one to come on subsection 16(9), we will be allowing the 18 months for people who presently do not have a licence to be licensed and treating them the same as those who have to be licensed. I think that is the explanation.

Mr. McGuigan: I am not sure if it really impinges on this motion or not, but going back to the answer on first movement, I had a personal experience—and I am sure there are lots of people in this case—of farmers who deliver—in my case, it was apples—to our co-operative cold storage and then hire a truck to bring them from the co-operative cold storage during the course of the winter back to the farm where we do our grading and packing. On that movement, a guy got picked up and it was called a second movement. I wonder if we should really look at that.

Perhaps it is in regulations more than in this motion. The ownership had not changed on the product. It was still the farmer's product, because it went to his own co-operative cold storage. Coming back, they called it second movement. I think it should not be second movement in that particular case.

Ms. Kelch: If you look at page 5 of the bill, clause 3(4)(c), it is now defined as—

Mr. Cousens: I am sorry. I missed that.

Ms. Kelch: Page 5 of the bill. Clause 3(4)(c) states, "goods used on farms and farm products." We are not as explicit in terms of that being first move. Those are goods used on farms and farm products, so I think your apple movement would be safe there.

Mr. McGuigan: That excludes it. Fine, thank you.

Mr. Chairman: Any other comments or questions?

Mr. Cousens: I have a number of comments, and I think the first one has to go into the fact that my friend Mr. Morin-Strom has certainly brought forward an amendment, and I am pleased to see that the government has come back with minor revisions. The intention that was the basis of Mr. Morin-Strom's original amendment to subsection 6(5) showed that he had a very deep insight into some of the ramifications of the bill. I guess it really just shows the importance of committee work and going through this line by line, word by word, to make sure that you capture the total intent of everything that has to be said and done. I want to commend him for his ability in doing that, and I also would like to commend the government for coming back with these minor changes.

It almost happened that yesterday when this was brought forward in committee that it was just glossed over; it was not important. Yet it was important, and this is verified even further by comments by Mr. McGuigan.

Hon. Mr. Fulton: It shows that the government pays very close attention to all members of the Legislature.

Mr. Cousens: And we would like to add, if it were true, "in all matters."

Hon. Mr. Fulton: I believe it to be so.

Mr. Cousens: The words sound nice to the ears, but they do not necessarily give you more parking places where you want them and certain other things.

Mr. Chairman: On this amendment.

Mr. Cousens: I am coming back to the amendment. Are there any other instances in which this could apply? I would be interested in knowing. When you are raising the whole question about vehicles, the three axles and so on, are there any other instances in which they are affected by the new legislation that maybe have not been addressed? Could someone give me the assurance they have gone through the bill to look for any such anomalies that might be apparent?

Mr. Hobbs: This is the second time through on clause-by-clause, and while this one certainly has gone forward, to the best of our knowledge and in terms of the debate and discussion which has gone on in the past, I do not think there are instances that have been raised.

Mr. Cousens: Is the six months sufficient time? What happens to them if they have not done it within that time period? What then is the consequence on people who will be affected by this part of the bill?

1600

Ms. Kelch: If they are stopped by one of our enforcement officers and they do not have the appropriate authority, they would be charged.

Mr. Hobbs: Not for 18 months.

Mr. McCombe: Because the six months is simply a qualification to be eligible for this exemption. The intention is, if you have been in the business of carrying such goods which were exempt, you will enjoy this exemption with regard to the certificate. This only says that if you have been in business for six months, you are exempted from the requirement. The later motion will say you then have 18 months in which to qualify.

Mr. Cousens: Okay now, that is what Doug was talking about for subsection 16(9). Just one other aspect that comes out of this: What is the method that is going to be used to inform those people who are not presently under the bill who will now be forced to follow the bill? Because you do not know who they are? Do you?

Mr. Hobbs: We will use the various media we deal with, in terms of informing people about new legislation or new progress, which will range all the way from television slots through to advertisements in various magazines, information pages which go to the farm community.

Mr. Cousens: With the minister's picture and name highlighted, that he is doing this?

Hon. Mr. Fulton: That is an excellent idea. I cannot remember the name of the organization. Mr. McGuigan, might be able to—we have met with the farm organizations, I think—

Mr. McGuigan: Berry, fruit and vegetable growers.

Hon. Mr. Fulton: They are aware of what is going on.

Mr. Hobbs: There were extensive discussions with the groups.

Mr. Cousens: I was aware. Just to the extent that you are going to need to ensure that they are aware, I think there is a lot of education that is going to have to go on because of this bill.

Mr. Deitsch: It could start now and they would be well educated by the time we get it through.

Mr. McGuigan: The truckers do have a newsletter of their own, too. I cannot assure you that everybody is on it, but they do have a newsletter.

Mr. Chairman: Thank you. Are there any other comments on Mr. Carrothers's amendment to subsection 6(5)? All those in favour, please indicate. Opposed?

Motion agreed to.

Mr. Chairman: Shall section 6, as amended, carry?

Mr. Morin-Strom: Excuse me.

Mr. Chairman: Sorry, Mr. Morin-Strom.

Mr. Morin-Strom: Yesterday we talked about where one would provide the ability on the issuing of fitness certificates, or the issuing of licences, the ability to be able to impose terms and conditions on the licence on the basis of fitness tests.

Mr. Chairman: I am lost as to where you are at.

Mr. Morin-Strom: I am on the end of section 6. I thought, when we had some discussion on section 7 yesterday, that one of the points I think had been made in one of the amendments I had, was that it was suggested it would be more appropriate than under section 6. Do you understand that?

Mr. Chairman: I think you are talking about going back to section 6.

Mr. Morin-Strom: We are in section 6, are we not?

Mr. Chairman: We carried all the subsections of section 6 except the amendment that Mr. Carrothers just gave us and on which we have voted. What I was asking was whether there is agreement on section 6 in its entirety, as amended. If you want to open a section within section 6 again, we have voted on subsection 6(1), 6(2), 6(3) and 6(4).

Mr. Morin-Strom: No, I think there was some suggestion that maybe a sixth section should be added.

Mr. Chairman: If you want to make an amendment to add subsection 6(6), that is fine. I am not quarrelling with you there, Mr. Morin-Strom. I am just saying that if you want to move an amendment, that is fine, but we are not going to reopen section 6.

Mr. Morin-Strom: No, I am not asking that. I am not asking for any of the sections we have passed to be reopened, no.

Mr. Chairman: Okay, what do you want to do?

Mr. Morin-Strom: I want to ask counsel whether a new subsection added to this is where one would most appropriately make the point that was made in my amendment to subsection 7(1) yesterday.

Mr. Chairman: As opposed to having it in section 7?

Mr. Morin-Strom: As opposed to having it in section 7. Yesterday we got opinion from counsel that one of the main points of that amendment, that the licence be able to be issued "in such terms as the registrar finds to be consistent with the fitness and the capacity of the applicant to carry out" his transportation service in accordance with the law and the public interest—I think those were some of the expressions that were in the amendment I had to subsection 7(1) yesterday—that putting it into subsection 7(1) would have no effect, because the point of subsection 7(1) was just the notification, that to give the registrar the right to put terms on the licence would be more appropriately put into section 6. If that is the case, and there was some confusion, I think, about that in terms of the counsel's opinion yesterday, I would like to get some clarification now.

Mr. Chairman: I understand.

Mr. Morin-Strom: Would this be the appropriate place to add that?

Mr. Yurkow: From a strict drafting point of view, I would have put it in section 4, which deals with the issuing of a licence, but from a legal point of view, if you put it in section 6 it will still work. It is not as neat, but legally there is no problem with it.

Mr. Chairman: What we would need is an amendment before us if we are going to make an addition to section 6. If you like, Mr. Morin-Strom, you could ask the members of the committee to stand down 6 until you have had an opportunity to work with counsel on an appropriate amendment called subsection 6(6), if you like. It is up to you.

Mr. Morin-Strom: I guess that is what I would prefer; otherwise I will prepare it here within a few seconds.

Mr. Chairman: What is the wish of the committee?

Mr. Carrothers: We do not wish to rush Mr. Morin-Strom. On the other hand, we would not like undue delay either.

Mr. McCombe: If that is going to be done, might I suggest that they put their minds to how terms added by the registrar will interact with terms that may be added at a later stage by the board after a public interest test? You might then have two bodies trying to add terms to the same licence. Add that to the consideration.

Mr. Hobbs: I think the basic issue, even if this is the appropriate place, is whether in fact this is desirable.

Mr. Chairman: That would be debated when the amendment was put.

Mr. Hobbs: Yes.

Mr. Chairman: Mr. Morin-Strom, may I suggest that you ask the

committee to stand down this section to give you an opportunity to talk to counsel and move it perhaps the next day?

Mr. Morin-Strom: Or later this afternoon.

Mr. Chairman: All right.

Mr. McGuigan: To add to the confusion, if the amendment were accepted, could it be put where it appropriately should be, as the counsel said, in section 4, assuming that it carried?

Mr. Chairman: Yes. I think that should be part of the discussion Mr. Morin-Strom has, as to where it should go. At that point, you would still have to ask unanimous consent of the committee to reopen that section and add it as another amendment, but I think we should deal with that at the time.

Mr. Morin-Strom: I do not think we need to reopen to put it in section 6, though.

Mr. Chairman: No, you can add it to section 6 right now; otherwise we are going to carry section 6 and get on with section 7.

Mr. Dietsch: In fairness, though, we have to look at what the substance of what we are trying to put in there is. If we are talking about the substance of the motions dealt with yesterday and the amount of time we spent trying to rework, reword and target in with respect to fitness, that kind of motion was not acceptable. I do not understand why we are going to try to rework and hold up in terms of trying to accommodate something that is not acceptable in any event.

If what Mr. Morin-Strom's resolution is aiming at is where he was yesterday in respect to what he wanted to put in 7(1) and dealing with the fitness aspect of things, then I think in fairness to the committee we should really talk about that and decide whether we want to accept something like that as opposed to taking the time to stand down.

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Mr. Chairman: In order to save Mr. Morin-Strom a lot of needless work?

Mr. Dietsch: Exactly. I am certainly not interested in putting him or myself through a lot of additional work. In one of his earlier comments he talked about racing through this bill. If there is anything we have not done, it has been to race through this bill.

Mr. Chairman: Mr. Morin-Strom, I am detecting some vibrations of resistance. You might want to consider whether you want to move an amendment, moving it now as an additional subsection to section 6.

Mr. Morin-Strom: I will do that.

Mr. Chairman: Mr. Morin-Strom moves that we add subsection 6(6) as follows:

"The registrar shall have the right to issue an operating licence to the applicant in such terms as the registrar finds to be consistent with the fitness and the capacity of the applicant to carry out his transportation service in accordance with the law and the public interest."

Do you wish to speak to your proposed amendment?

Mr. Morin-Strom: The point of this amendment is that the current legislation, as I understand it, does not provide the registrar with the right to take into account the fitness and the capability of the applicant to meet the public interest in terms of the transportation service he is proposing to provide. Rather than just issuing blank cheques to trucking operations to operate at their whim anywhere in the province, the registrar should be able to take into account the capability of the applicant and provide restrictions on the terms of the licence which is going to be submitted. This would then relate to the publication in the Gazette as well. We are not going to change what has been approved in subsection 7(1), but the minister has contended that the board has the right to put terms on a licence based on a public interest test potentially.

I believe the registrar should be able, in assessing the fitness, to determine that there is fitness for certain types of transportation services and then specify those restrictions in her notice in the Ontario Gazette so that it is made clear what precisely is being proposed in terms of the terms of the licence at the time of the posting in the Gazette.

Mr. Cousens: Could there not be some response from the registrar or some of the staff?

Mr. Chairman: You wish that before Mr. Carrothers?

Mr. Cousens: Oh, no. Go ahead.

Mr. Carrothers: I certainly understand Mr. Morin-Strom's desire, which he has made abundantly clear over these last few days, to be absolutely sure that our highways are going to be safe, and I commend him for that effort, but I think he is missing the point of this legislation. I draw his attention to subsection 6(1), which we have already passed, which indicates a licence is not going to be granted to anyone who has not demonstrated the ability or the fitness, if I could use that term, to operate safely the vehicles which he is going to be licensed to operate. I think the intent of what you are getting at is already there in subsection 6(1) and you are adding this discretion of the registrar, which is quite inappropriate and unnecessary.

Mr. McGuigan: You are fit or you are not fit.

Mr. Morin-Strom: Under subsection 6(1), that is right, you are fit or you are not. It is all or nothing on the licence application, but you may in your licence application have requested services beyond which you are fit for and the registrar should be able to make a determination in terms of restricting that application to what the registrar believes the fitness applies to.

Mr. Carrothers: Mr. Chairman—

Mr. Chairman: Just let him finish.

Mr. Morin-Strom: That is all.

Mr. Carrothers: I am sorry, Mr. Chairman. I was just getting a little worked up there.

I think in Mr. Morin-Strom's own comments he has made my point. He said

requesting something beyond which they have demonstrated fitness. They will not get it if they do not demonstrate fitness.

Mr. Chairman: Did you wish a comment from the ministry, Mr. Morin-Strom? You have heard enough, have you?

Mr. Cousens: I would be interested in a response from the minister or staff. It is an important issue.

Hon. Mr. Fulton: Just before Mr. Cousens spoke, I wanted to question whether the motion was in order because it really is just simply restating essentially what we have already approved, in slightly different words, but it does not seem to get us any further. It seems we are re-entering those items that we have dealt with and the committee has voted on which, I guess, is the role of the registrar. I think Mr. Carrothers has put it properly.

Mr. McGuigan: My understanding of a licence is that there is a sort of circle around, that you can do certain things. It strikes me that you can either do them or you cannot do them. I would be enlightened if you could give us some practical examples of what you have in mind.

Mr. Morin-Strom: I guess the kind of example I am looking at is where an applicant is applying for the right to carry a variety of goods, or perhaps almost an unlimited variety of goods. He may have had experience in carrying many of them, but there may be certain ones that he is proposing of which the assessment of fitness is that he should not have the right to carry those goods because—I do not know—of the Dangerous Goods Transportation Act, or whatever; he does not have the familiarity with the carrying of toxic chemicals, let's say. But as for the other goods they are carrying, they are judged to be fit and to be experienced in handling them. So if the registrar judges that they should not be able to operate tanker cars for cyanide or some other toxic chemical but they should be able to carry steel and lumber, then she should be able to make that specification in the licence.

Mr. McGuigan: I think the staff could maybe comment on that, but certainly my understanding is that that is covered at present with the licensing system that we have.

Mr. Hobbs: If this amendment were to proceed by using the words "public interest" and "capacity," then in effect you are going to have two public interest tests, one which is conducted by the board and one which is conducted by the registrar. You are going to have total chaos.

Mr. Cousens: I want to ask legal counsel: would this amendment give extra powers to the registrar that are not already existent in the earlier parts of the bill, that would give him or her discretionary powers over circumstances that might not otherwise be at their disposal? I somehow interpret that it gives a bit more freedom to the registrar to use another sense of this. Is that not true?

Mr. Yurkow: Offhand, that would be my impression, that you are giving the registrar greater powers than the registrar currently has under the bill.

Mr. Cousens: Okay. That is certainly my thought. I guess, to me there are elements. I had a moment to comment just briefly on this with the registrar last week and I do not have the answer to it, but I think we are not just dealing with registration of Canadian vehicles, in which we can test them

out, check them out and the fitness test is all okay and we have methodologies that allow us to be fairly secure. I am not worried about your doing it, but when you start getting involved with operators that are outside of our jurisdiction, might it not be to the advantage of the registrar to have certain additional powers at that time to intercede and to exercise certain controls?

Mr. Hobbs: That is covered under the federal Motor Vehicle Transport Act; it is federal legislation. What you have, and what you would have if this amendment were to proceed, is a fitness test in the Ontario legislation which is dissimilar in a major way from what is contained in the federal legislation in terms of the fitness test, in terms of what is contained in the Quebec legislation for intraprovincial, and for most of the other provinces that have moved on this. There is a basic consensus in Canada about what generally the fitness test is and what the scope of it should be. I think you would be getting into some major inconsistencies if you were to move in that direction.

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Mr. Cousens: That would worry me. I think there has to be quid pro quo in what is going on. Certainly that operation allows for what is going on in other jurisdictions so we are working together. I am raising the question, though, whether it gives extra protection. In listening to Mr. Morin-Strom's point, I think he is really only just trying to make sure there is that protection there on the part of the registrar.

Mr. Hobbs: We think the protection contained in the bill as it is currently drafted is adequate. Again, it could in a major way change the role of the registrar and if in some way this were to be seen as something which could be used in almost a public necessity and convenience sense— We already have Quebec very upset about the way in which the Motor Vehicle Transport Act is being applied vis-à-vis Quebec carriers wanting to get into Ontario. If you create a situation inside Ontario in terms of intra which is very much different from what is already legislated in Quebec, then we are going to have a great deal of confusion and a lot of tensions and problems.

Mr. Cousens: I do not think we want to create that kind of problem in the implementation of this.

Mr. Hobbs: It is not just the implementation; it is the basic concept. Those words change the basic concept of what the registrar does with respect to fitness, where there has been a major consensus across the country.

Mr. Cousens: I have to bow to the kind of thing you are saying on that. I think there is a precedent where you build up a trust in the system and you are now saying it would drastically change it to do this.

My heart is saying one thing but when I hear what you are saying, I can see that could have implications in our future relations with other jurisdictions. I will have to vote against this amendment on the basis of what you are saying.

Mr. Dietsch: Mr. Morin-Strom gave some examples with respect to truckers requiring additional rights. I would address this question to you, Mr. Hobbs, as you answered the last one, in relationship to the examples Mr. Morin-Strom gave as concerns. Can they be addressed in other areas of this bill with regard to additional hauling privileges or additional produce or additional hazardous wastes or those kinds of items, without the inclusion of this item?

Mr. Hobbs: To the extent that I understood what he was saying. We believe that in terms of the various things contained in here.

Mr. Dietsch: They have to meet those different requirements of different acts before the registrar can deal with them as an application.

Mr. Hobbs: Yes, in terms of what one is going to be hauling and where. This act does open that up beyond the very restrictive types of things we have had in current licences. There is an opening up there which is designed to try to ensure that there is a broader provision in responsiveness to the market.

Mr. Morin-Strom: I have to disagree with the minister's comment particularly, in terms of a consensus agreement here. In fact, the consensus agreement as requested in Responsible Trucking reflects the opposite. I read from one of the submissions we received during the public hearings from the Canadian Transport Lawyers' Association, page 4:

"Again, if the fitness test is to be consistent with the consensus agreement embodied in Responsible Trucking, then it should be modified to permit the body applying the test to impose terms and conditions on the licence to be granted on the basis of the fitness test so that the licence matches the capacity of the applicant to provide the service. An example of such a modification appended hereto as Appendix 1."

We have other testimony before our committee.

Mr. Hobbs: Can I just clarify? When I talk about a consensus, I am talking about the consensus that developed among the provinces and the federal government in terms of the discussions that took place going towards the drafting of the MVTA and the respective provincial acts some time after Responsible Trucking. There have been several iterations in all the discussions that have taken place on this issue since the Responsible Trucking document was put out under the previous government. I am talking about the consensus among the provinces and involving the federal government. There are a number of iterations that have gone on since the document you are talking about.

Mr. Morin-Strom: May I continue my comments?

Mr. Chairman: Yes.

Mr. Morin-Strom: I am talking about the consensus within the various parties relating to the trucking industry. I cannot help it if we have a right-wing Conservative government federally and they are able to drag in our provincial government in terms of a deregulation move and open up the trucking industry to who knows what, including safety concerns which were expressed to our committee by so many people during the hearings this summer.

We can go through other submissions this summer in terms of safety concerns and the lack of an effective fitness test. In the submission by Manitoulin Transport, one of the major carriers in northern Ontario, presented to this committee I believe in early September, on page 27 of their document I see references to the inadequacy of the fitness test.

"There is a big question mark in our minds regarding safety on our highways. There is nothing in the fitness test to screen any unsafe operators and they will, in all likelihood, not be subject to a public interest test.

Their applications will be processed at the same time as the other 100, 200 or more initial applications. There will be no limitation of fleet size as the ministry suggests."

They go on with a second comment:

"Presently the fitness test is unmeaningful through the ministry and unsafe applicants are going to be granted wide-open licences with no restriction on fleet size as described in 1 above. Responsible Trucking and other government studies recommended a financial or business plan."

Well, I know you do not want to talk about financial or business plans because we addressed that yesterday, but the point has still been made, I think, that we are creating a risk of safety on our highways in this bill. The inadequacy of the fitness test has been clearly laid out and I think we should in this legislation at least give some powers to restrict the scope of licences based on the capacity of a trucker to provide service and meet the public interest.

Hon. Mr. Fulton: We do not have to agree with a number of the points the members has raised and we not always have to agree with what the lawyers' submission refers to either. I did want to correct one mistake I think the member made. The regulatory reform initiative in fact started under the former Liberal government when Mr. Axworthy was Minister of Transport, and in the US it was started under the Carter administration, not the Reagan. I think you have made that mistake before as well.

Mr. Morin-Strom: They are all the same difference to me.

Hon. Mr. Fulton: Well, you are not going to have many other places to go.

Ms. Kelch: May I just clarify Mr. Morin-Strom's comments vis-à-vis safety? I think it is important for us to be aware that currently the registrar's responsibility with respect to safety and the fitness test is very much one that if I find the kinds of problems you have described, as Mr. Carrothers has indicated, that individual would not be found fit. If you are not found fit, then you do not go any further.

I believe that is the most stringent safety requirement in the bill. If you cannot prove to the government that you are complying with the rules and regulations under those six or seven acts which are listed there, which include things like the movement of dangerous goods, then you will not be found fit. So to indicate that perhaps I should reconsider, even though someone is not found fit, to allow him to have a licence with certain conditions even though he is not fit, in my mind would be a step backwards from safety rather than a step forward.

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Mr. Chairman: If the clerk reads the proposed amendment, is the committee ready for the question? Did you have a question? Sorry.

Mr. Cousens: Some questions are still being raised. I just have to be satisfied that Mr. Morin-Strom's concerns have been addressed and I am just not sure what special circumstances might arise in the future where you need to have the powers that we are talking about, and whether or not there is any way—if, for instance, a situation were to arise where the registrar felt she

did not have sufficient power within things, is that kind of thing likely? You are saying no, that if there is something outside of all the terms as we now see them, you do not feel that there is anything that can stop you, in those circumstances, from making a ruling against the giving of a licence?

Ms. Kelch: Well, I guess, again, it is important to keep in mind that we have several phases in the issuance of the licence here.

The first phase that you have to go through as an applicant is determining whether, in fact, you are fit. We do not believe that it is appropriate, if you are not fit, to even think about issuing you a licence.

In the second phase, however, if you are found fit and someone else in the system believes that you are going to have a detrimental impact on the public interest, then there is that process in place that would allow conditions to be applied if, in fact, the public interest detriment is proven. But it is the board, not the registrar, that has that authority.

Mr. McGuigan: Mr. Chairman, if the member's amendment is going to allow a truck on the road that has a wheel missing, but we say, "Well, because it has a wheel missing, you can only carry a half load," I do not want that truck on the road, and I do not think anybody in this room would want such a truck on the road, and it would never get on the road.

I think this amendment is just not practical at all and is not needed.

Mr. Morin-Strom: I think the members must recognize, and the ministry as well, that it is going to be very hard to refuse a licence to a large carrier that is moving in on the province on the basis of fitness. I would be very surprised to see the registrar denying these licences to the large operators moving into our province. But if she had the right to deny certain aspects of the licence, then we might see some types of restrictions, at least in certain areas. But for all practical purposes, you are not going to have the right and it will not happen; they are going to be given licences.

Mr. Dietsch: Mr. Chairman, I would like to ask for clarification. I thought I understood Mr. Morin-Strom to be zeroing in on the safety aspect of things, but now, from the last comments, I hear him zeroing in on other truckers coming in. I am being confused probably by the length of time in regards to answering questions; but secondly, maybe by the content of the questions. You have just said, I am sure I heard, that your concern was that the registrar would be able to license any big company coming in to the province.

Mr. Chairman: Is that your question to Mr. Morin-Strom?

Mr. Dietsch: I would love to have an answer.

Mr. Morin-Strom: I am giving you the practical realities of what is likely to happen in terms of the operation of this legislation. The fitness is going to be tested on an overall basis of being fit, in general, to operate a trucking firm, when it comes to safety. And I am saying that safety should be analysed, not just on the overall basis of whether you are a safe operator, but on specific types of products and fitness or safety, to be able to handle a product in certain potential areas or certain industries.

I think, by giving the right to specify, change the terms of the licence, we are likely to see a more comprehensive and closer look at various

components of the types of haulage that are being handled by a truck as opposed to looking at the overall fitness or safety of a hauler. Just because he appears, overall, to be a safe hauler does not mean he is going to be, on any one particular type of dangerous good.

Mr. Carrothers: I guess I am a bit confused, because I do not know how else you estimate the safety of an operator unless you look at the ability of that operator to operate safely, but maybe I am missing something.

You mentioned dangerous goods. It seems to me there is other legislation that covers the haulage of dangerous goods, which covers off specific toxic and other products around. So I think that is covered, Mr. Morin-Strom.

I do want to reiterate what the registrar mentioned. There is a public fitness ability here. If there is a problem, there is kind of a safety net, which I hope we will come to in a subsequent section, where the board has some ability to step in here. So I think the concerns you are raising are covered, Mr. Morin-Strom.

Mr. Morin-Strom: I guess I am raising the concerns on behalf of the trucking industry, about which we heard much testimony during the hearings. We did not hear testimony on the government's side advocating that, in fact, the fitness test and the safety provisions of this bill were adequate. The concerns on the other side were that they were inadequate. The recommendation we have heard on this is that the kind of amendment I have made be put forward. So I think I am representing the people who know how the industry operates and what the real safety concerns of that industry are.

Mr. Chairman: Mr. Morin-Strom moves that section 6 be amended by adding a new subsection as follows:

"(6) The registrar shall have the right to issue a licence to the applicant with such terms as the registrar finds to be consistent with the fitness and capacity of the applicant to carry out transportation service in accordance with the law and the public interest."

Mr. Cousens: Part of the problem is the fact that it is not including the board in this, it is giving the power to the registrar.

Mr. Chairman: We cannot debate this in the middle of the question being put. All in favour of the amendment, please indicate. Opposed? The amendment is lost.

Section 6, as amended, agreed to.

Section 7:

Mr. Chairman: We have completed and voted on subsections 7(1), 7(2) and 7(3). I have asked if there are any other comments on any of the subsections up to the end of 7(14). Any comments or questions on subsection 7(4)?

Mr. Cousens: Sorry, Mr. Chairman, where are we?

Mr. Chairman: Sorry, Mr. Cousens, we are on page 11, subsection 7(4). We passed subsections 7(1), 7(2) and 7(3) yesterday.

Mr. Cousens: All right, fine.

Mr. Chairman: All those in favour of subsection 7(4)? Opposed?
Carried.

Any comments or questions on subsection 7(5)?

Mr. Cousens: It says "shall be limited to the allegation that false information was given." Can you explain what that means? I am just not sure. That would be pretty self-evident, as far as I am concerned.

Ms. Kelch: If you go back to subsection 7(4), it does indicate that the only basis on which the registrar would revisit a fitness application is if someone were able to prove that false information had been put forward. So this is a restatement of that same item in subsection 7(5).

Mr. Cousens: Are your files open, then, through the Freedom of Information and Protection of Privacy Act, so that is how people would find that out?

Ms. Kelch: Normally, the way this would happen is that someone from another jurisdiction would come forward and indicate that the carrier, in fact, had a poor operating record, say for example in Nebraska, and I was not privy to that. Although the the carrier had indicated it had a clear record everywhere, false information had been given.

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Mr. Cousens: Do we have access to your files through the freedom of information?

Ms. Kelch: Yes.

Mr. Cousens: So any person who is concerned about a competitor could get that?

Ms. Kelch: Yes.

Mr. Cousens: Have you had people making use of that in order to check on their competitors yet?

Ms. Kelch: To a limited degree, yes.

Mr. Chairman: All those in favour of subsection 7(5) please indicate. Opposed? Carried.

Are there any comments on subsection 7(6)?

Mr. Morin-Strom: Yes. We heard testimony during public hearings about concern with subsection 7(6), that the registrar must hold such a hearing where there is an allegation of false information given with respect to fitness. It has been suggested that the OHTB would be institutionally better equipped to handle this kind of discretionary decision-making rather than putting that in the hands of the registrar. I would like to know why you have not given it to an independent board to make such a discretionary evaluation rather than having the appeal go to the registrar again.

Mr. Hobbs: Because the registrar deals with fitness. It is not a debating item in front of a board. If somebody comes out with some information from, for example, Nebraska that is patently not part of the evidence which was submitted, that is the area the registrar deals with.

Mr. Morin-Strom: To me, an appeal implies there is some kind of reassessment done. It would seem inappropriate to me that the appeal to a decision of the registrar would be going back to the registrar again. An appeal in terms of a contention that a fitness determination was inappropriate should be going to a more independent body that could apply some kind of judgement and make a fair evaluation.

Mr. Dietsch: On a point of order, Mr. Chairman: Are we talking about subsection 7(6)?

Mr. Chairman: Yes.

Mr. Dietsch: There is no reference to appeals in subsection 7(6).

Mr. Morin-Strom: That is essentially what we are talking about: "the registrar shall reassess the question of...fitness." I am suggesting that—

Mr. Dietsch: With all due respect, I think it reads that if there were false information given, there would be a review done based on the false information given, certainly not through any appeal process.

Mr. Chairman: Perhaps you could address it, Mr. Morin-Strom, in terms of the reassessment rather than appeal.

Mr. Dietsch: I would hate to confuse you.

Mr. Morin-Strom: Actually, we should have discussed this under subsection 7(5) as well; "the registrar shall hold the hearing." That should have been the OHTB holding the hearing, not the registrar.

Mr. Chairman: Anything else on subsection 7(6)?

Mr. Morin-Strom: We have obviously made a bad mistake in subsection 7(5), but it is too late now. I guess we will have to scrap the bill.

Mr. Carrothers: There is an appeal to the Licence Suspension Appeal Board. He was concerned about appeals. There is a right of appeal. We have already put it in previous sections.

Mr. Cousens: That is the key point, that the right of appeal is still there. I think that is really part and parcel of the concerns being raised by Mr. Morin-Strom.

Mr. McGuigan: The OHTB does have the right to redo its own decisions, too. It does not necessarily go to another group.

Mr. Dietsch: I would think we would want to be concerned about an individual corporation that receives a licence based on false testimony. We would not want that kind of company operating in the province. If they supply that kind of information, perhaps they are not going to be as safe as we would all like to see them be. I think that is the point we want to address and it appears to me that we have.

Mr. Chairman: Can we deal with subsection 7(6)? All those in favour? Opposed? It is carried.

Are there any comments or questions on subsection 7(7)?

Mr. Carrothers: Perhaps we could do subsections 7 through 14.

Mr. Chairman: That is a little unfair to the members who are—

Mr. Carrothers: Excuse me.

Mr. Cousens: I would like to spend some time on subsection 11, if I could.

Mr. Chairman: Do you know if you have anything else, on subsections 7, 8, 9, or 10? I do not want to rush you. Mr. Morin-Strom and Mr. Cousens, am I rushing you on that?

Mr. Morin-Strom: I have a question about subsection 7(8).

Mr. Chairman: Anything on subsection 7(7)? Please indicate if you are not ready for the question, otherwise I will call it. All those in favour of subsection 7(7)? Opposed? It is carried.

Mr. Morin-Strom: I see subsection 8 says, "The minister may direct the board to hold a public interest test." How is the minister going to make the determination that there should be a public interest test?

Hon. Mr. Fulton: It seems to me that was one of the issues you were pushing for earlier, that you want the minister of the day to be able to order a public interest test. That is what we are providing for here. It is done on the basis of submissions made to the minister of the day by interested parties.

Mr. Hobbs: It is the final safety net.

Mr. Morin-Strom: I think one of the concerns is that when we have a minister who is opposed to public interest tests, how do we get public interest tests, if the minister—

Hon. Mr. Fulton: You are talking about the minister of the day, not any particular minister?

Mr. Morin-Strom: The minister of the day, it seems to me, has complete discretion here on holding public interest tests.

Hon. Mr. Fulton: Presumably someone who would want to have the public interest test would make other people aware of the fact he wants to have the public interest test. It could be addressed from several directions. I suspect they would enlist your help.

Mr. Morin-Strom: Under what criteria will the minister decide whether there will be a public interest test?

Mr. Carrothers: On the basis of a tremendous understanding of transportation issues, Mr. Morin-Strom.

Mr. Chairman: Gained at these committee hearings.

Mr. Carrothers: That is right. Gained at these committee hearings and with your help.

Hon. Mr. Fulton: Thank you, Mr. Chairman.

Mr. Hobbs: The basic guideline would be similar to those which are set out with respect to the public interest test itself and any evidence which arose beyond that.

Mr. Morin-Strom: Will there be regulations developed which lay out the guidelines for the rights to a public interest test?

Mr. Hobbs: Yes. Paragraph 10(1)5.

Mr. Morin-Strom: Do we have a draft of those regulations?

Ms. Kelch: The guidelines, yes.

Mr. Morin-Strom: Have they been provided to this committee?

Ms. Kelch: I do not know, probably.

Mr. Morin-Strom: I understand the ministry has provided the guidelines for the minister's decision on public interest tests. The assistant deputy minister indicates they might be available. I wonder if we could get them for the committee.

Mr. Chairman: Is that the case, Ms. Kelch?

Ms. Kelch: They are available, yes.

Mr. Hobbs: In draft form. They are still subject to change right up until such time as they may go forward.

Ms. Kelch: Keeping in mind, of course, that those are the guidelines to the board, for the board to make the decision.

Mr. Hobbs: The same types of considerations would be taken into account by the minister, and there is a requirement that he publish the reasons for ordering.

Mr. Chairman: I think the question was what criteria the minister would use when he directs the board. Are those the same criteria? I did not understand it either.

Mr. Hobbs: It would be the same types of considerations. I do not think you are going to set out a defined list. Again, it is a safety net in the event that there is concern.

Mr. Dietsch: Is this unlike many other clauses in many other bills, the same sort of thing, where there is a last and final opportunity to bring these things to their satisfactory conclusion? Obviously, the minister responsible would be the individual who would have that opportunity, whether it is the minister of the day or ministers in the future.

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Mr. Chairman: Anything further, Mr. Morin-Strom?

Mr. Morin-Strom: I guess I would just request that the committee be able to receive those before we deal with subsection 10(1), which refers to those guidelines.

Mr. Chairman: Are you willing to vote on subsection 7(8) now?

Mr. Morin-Strom: Yes. They are addressed directly in 10(1), I think. You should see them before that.

Mr. Chairman: Is there agreement by committee members?

Mr. Dietsch: The draft guidelines would be circulated?

Mr. Chairman: Prior to voting on 10(1).

Mr. Carrothers: Before we start on 10(1), I do not want to unduly delay us again by agreeing to that, unless they are available right now.

Mr. Morin-Strom: How long is it going to take?

Mr. Hobbs: I just want to add one thing. The draft guidelines are draft guidelines; the legislation simply stipulates. What you are looking at is something that has the potential for change; so that I think in terms of talking about 10(1), you cannot pin the discussion on 10(1) to some draft regulations which are simply sitting out there in the process of being developed.

Mr. Carrothers: Are those available right now, Mr. Morin-Strom?

Mr. Hobbs: Yes.

Ms. Kelch: I see Mr. Radbone was just having a look; if he does, we will have copies made and get them to you in a few minutes.

Mr. Chairman: All those in favour of subsection 7(8) please indicate. Opposed? Carried.

Any comments on subsection 7(9)? Ready for the question? All those in favour of subsection 7(9)? Opposed? Carried.

Subsection 7(10). All those in favour? Opposed? Carried.

Subsection 7(11), Mr. Cousens?

Mr. Cousens: I agree with the intent of subsection 7(11), where there are going to be certain times when it will not be necessary for a hearing. As I look at the groups in clauses (a) through (j), I can appreciate their categories there. Could representatives of the ministry answer this. What groups have they excluded and by what criteria have they established the ones that are included in that subsection? They have really burned the midnight oil, I can tell.

Mr. Hobbs: There are 10 years of discussion, Mr. Cousens, that have gone into various parts of what we have.

Mr. Cousens: I am aware of that.

Ms. Kelch: Also important to note or add to the deputy's comments, Mr. Cousens, is that all of these items have been the basis of considerable debate across the country. These are not just Ontario's conclusions. In fact, on clause (i), we did have a group that came before the committee to try to ensure that, in fact, they were going to be exempt. The Ontario Mining

Association was in here to make that point. We have also had submissions throughout the 10 years that the Deputy refers to, in terms of concluding this list.

Mr. Cousens: I guess we are just taking clause (i) as an example. What was their status prior to this bill, then? The mining interests were just confirming that this bill would continue to give them the exemption that they have enjoyed until now. Is that right?

Mr. McCombe: To the best of my knowledge, they are not exempt from the Public Commercial Vehicles Act at present; they will not be exempt from the Truck Transportation Act. But it was concluded that the public interest test was not appropriate for that commodity, which has been mentioned as primarily a northern Ontario commodity.

Mr. Hobbs: This does not exempt them from fitness or competency tests, or any of that stuff. It is simply the public interest test, and it has to do with the nature of the commodity and the sector that that commodity forms part of in terms of farm products. You are talking about a significant impact. You are not talking about large corporations engaged in sort of local activities.

Mr. Cousens: I appreciate that. Could you give me the rationale for those that are included and for ones that have been deliberately excluded from this list?

Mr. Chairman: That is the rationale for all of them.

Mr. Cousens: Is that a broad question? I would like the answer if I could, please.

Mr. Chairman: I am sorry. I do not understand the question, either. Could you give us some specifics?

Mr. Cousens: We have identified that there are going to be clause 3(4)(a) through 3(4)(j). They are in front of me right now. We could say, "All right, you have those included." I want to know the criteria by which they are listed here. Obviously, when you are drafting such an important bill, there has been some consideration to say: "These are the ones you are including. Have you excluded certain ones, and why?"

I am asking whether there are others where people have asked to have the exemption that you are offering there, and you are not including them. I can get very specific with my questions. I thought I would give an opportunity for a generic discussion on this. I think it is an important question.

Mr. Hobbs Mr. Radbone has participated particularly in the interprovincial discussions. A lot of this relates, as Margaret said earlier, to discussions that have taken place so that there is some consistency from province to province, particularly taking into account industries where you have fairly specialized and localized trucking conditions.

The trucking of newspapers and periodicals normally takes place, especially with satellites today, in a very regionalized context. There are not very many people who are engaged in those kinds of businesses.

Hon. Mr. Fulton: The movement of fresh fish under clause (e) would speak for itself.

Mr. McGuigan: Would it be fair to say, minister, these are mostly natural resource products, as opposed to those that have been processed?

Mr. Hobbs: Natural, specialized, localized.

Mr. Cousens: Certainly clause (a) is very special. I would be interested in the response.

Mr. Radbone: The council of ministers, going way back to about 1980—something, agreed to develop this. This was originally when they all agreed to implement trucking reform across the country. One of the things they agreed to was to develop a national ease of entry list of commodities—ease of entry being those commodities that are subject to fitness-only, but would be exempt from the public interest test. It proved impractical to develop a national list because certain provinces had a pet commodity that they did not wish to have on the list. It became very difficult.

It did become possible to develop regional lists. Western provinces have developed a list of such commodities. The maritime provinces have and so has Quebec. The things that are on this list are predominantly those things that appear on the western provinces' lists, the Maritimes' lists and Quebec's lists. We have discussed these things with other provinces. It is not a truly national list. It is not absolutely consistent. Most of the things on this list appear on those lists.

The basis for what goes on the lists were raw materials—low value commodities in which there was a need to have an abundant supply of trucks. Because of the low value, you have to keep the trucking costs very low—and those types of things. That was generally the basis of how this list was developed.

Mr. Cousens: I guess to me, it makes sense to approach it that way. By your memory, are there certain ones that you have excluded from this list that are in other jurisdictions, or do you feel that there has been a very fair, balanced approach in the development of this?

Mr. Radbone: I think the list is pretty consistent with what is to the east and west of us. There are minor differences. For instance, in the western provinces, the dump truck industry is completely exempt. It is not regulated at all. Nor is it in the maritime provinces, whereas here it is probably more stringently regulated than the rest of the for-hire industry. There are anomalies. Quebec and Ontario are really the only two provinces, for instance, which regulate the dump truck industry. The remaining provinces are unregulated. There are differences, but there are more degrees of consistency than there are differences. We do have the lists from the other provinces.

1700

Mr. McGuigan: Unless I have missed it, I do not see coal. I do not think we are a very big producer of coal in Ontario.

Mr. Cousens: That would make good sense, though. I wanted to just see that the criteria established for this are not going to cause any kind of questions afterwards. The only other aspect is with the United States, but I am more interested that we have this Canadian scene working well the way it has been discussed.

Mr. Hobbs: If it were the United States, that would have to be handled under federal legislation.

Mr. Chairman: Are there any other comments or questions on subsection 7(11)?

Mr. Morin-Strom: I have a question about the language here, in particular the word "requirement." "The requirement to hold a hearing," and then you go on. It does not apply in these cases, right? This seems to imply that there is a requirement to hold a public interest hearing. The way I understood the bill before was that the public interest hearing is discretionary, up to the minister, according to the one of the subsections we just passed. Is that language really proper there? I would note it is in subsection 7(12) as well. What does that really mean?

Mr. Carrothers: I think this section has created, further up in subsections we have passed, a mechanism to have a public hearing if we want it. This is a subsection of a section in which that takes place. We are just exempting a requirement we created earlier in the section, if it is triggered.

Mr. McGuigan: If there is a requirement.

Mr. Carrothers: If it is triggered. In other words, there is not a public interest test. In certain circumstances, clause 7(4)(b) will not apply. That would be my interpretation.

Mr. Morin-Strom: Is it the requirement to hold the hearing as part of the public interest test? Is that the idea? The public interest test goes on without a hearing? "The requirement to hold a hearing to conduct a public interest test." Does that mean if the minister asks for a public interest test under one of these, the public interest test goes ahead before the board, but there is no hearing as part of it?

Mr. Carrothers: How could you do that?

Mr. Morin-Strom: I do not know. I am questioning legal language here. I am no lawyer, but it is just the way I read it.

Mr. McCombe: If you return to subsection 7(9), "Where a request is made under clause (4)(b), the board shall, subject to section 9, hold the hearing requested." That subsection mandates the holding of a hearing by the board in certain circumstances. Subsection 7(8) mandates it where the minister directs, so there are two circumstances in which the board is required to hold a hearing. Subsection 7(11) says the requirement does not apply with regard to the following list of commodities.

Mr. Chairman: It is taking you ahead in section 9 as well, right? You referred to section 9?

Mr. McCombe: Subsection 7(9), the one we passed a moment ago.

Mr. Chairman: Sorry. Okay.

Mr. Morin-Strom: I see. The requirement is only if clause 7(4)(b) were exercised.

Mr. McCombe: Or the minister's requirement referred to in subsection 7(8).

Mr. Morin-Strom: Okay.

Mr. Chairman: Any other comments on subsection 7(11)? Shall subsection 7(11) carry? Carried.

Are there any comments or questions on subsection 7(12)?

Mr. Cousens: Is there a list of those who have a CVOR who would be affected by that requirement? How many would be involved?

Mr. McCombe: It is a few thousand at this point because you are talking about five years of licensing. I believe it is at the 5,000 level, is it, roughly, those with specified-term licences?

Mr. Radbone: It is a lot.

Mr. Cousens: Could you describe the type they are?

Mr. McCombe: Every type there is. Anybody who has applied for a licence since June 1983, which was the date of Responsible Trucking, has a specified term licence which will self-destruct 18 months after this act comes into force.

Mr. Cousens: Again, I support the intent behind that one. I recognize the effort they have made.

Mr. Chairman: Shall subsection 7(12) carry? Carried.

Are there any comments or questions on subsection 7(13)? All those in favour? Opposed? Carried.

Are there any comments or questions on subsection 7(14)?

Mr. Morin-Strom: We heard from the Ministère des transports du Québec, who indicated the Quebec law does not have a specific sunset provision. There must have been some kind of agreement between the various provinces and the federal government on this. Why are we putting a sunset provision?

Mr. Hobbs: Quebec is basically the odd province out. Originally, the intent in terms of the Ontario legislation was to have a five-year sunset. The federal government came in and wanted no public interest test. Among most of the jurisdictions, there was an agreement that you would put a public interest test in with a monitoring device and a sunset at five years, on the basis of the review of a formally appointed advisory board, which monitored what happens over that five-year period.

We are going with the majority of the flow in terms of how this has been handled in different jurisdictions. That in no way indicates that the public interest test will not continue. Simply, there is a five-year review provision. At the end of that time, it will be determined whether it will continue.

Mr. Morin-Strom: What do you mean, whether it will continue then? It says here quite specifically that these two clauses cease to apply five years after coming into force.

Mr. Hobbs: The government will have an opportunity to amend the legislation if in the course of the review it determines, before that date, that it is appropriate to continue with the public interest test.

Mr. Morin-Strom: But lacking an amendment to this bill, the public interest test definitely ends after five years. There had been some indication, I think, in terms of the government's position on this, that the interest test could have been put back even without having to amend the legislation, but this is rather specific.

Mr. Hobbs: I just reiterate that there is a provision for a broadly based committee to review what is going on and the intent of the committee—this is on page 30—is to recommend to the minister in a time frame which would be appropriate, and allow the minister of the day to put legislation or amendments to this act into place that would continue the public interest test if it were so deemed advisable in terms of the recommendation of the committee and the determination of the government. There is a sunset but there is also a provision in place which could lead to the continuation of the public interest test after that time.

Mr. Chairman: Any further comments on subsection 7(14)? Shall subsection 7(14) carry? All those opposed? Carried.

Section 7 agreed to.

1710

Section 8:

Mr. Morin-Strom: I am concerned about the criteria for the issuing of a temporary licence. This looks like it is an extremely arbitrary and powerful clause in terms of the rights we are giving to the registrar. I think we would like to know what is the need for this power, what kinds of cases this is likely to apply to and why we are giving such strong and arbitrary powers to the registrar.

As I understand it, as a matter of fact, this can be issued without even a fitness test. We are giving the right to issue licences without a fitness test, certainly without the rights of a public interest hearing; but even without the assessment of safety and fitness, this right is given to the registrar.

Ms. Kelch: Mr. Chairman, could I comment on that?

Mr. Chairman: Yes, Ms. Kelch.

Ms. Kelch: Mr. Morin-Strom, you may remember the discussion of the other day where there was quite a bit of concern expressed by the committee in instances where an individual died or where there was a transference requirement. There was quite a bit of interest in our being able to in fact give a temporary authority to those individuals while they went about obtaining the appropriate authority. That is what this clause is intended to do.

Mr. Dietsch: That was a couple of days ago, was it not?

Ms. Kelch: I do not remember which day it was.

Mr. Cousens: Are there criteria at all?

Mr. Morin-Strom: Yes, the question is, what are the criteria? We hear one example of where it can be done, but it is a very, very strong and

arbitrary power here, so it would be nice to know if there are going to be guidelines as to when this is going to be applied.

Ms. Kelch: I guess, as the clause indicates, the registrar has to be "satisfied that the circumstances warrant it," i.e., that it is important enough for that business to continue operating.

Mr. Morin-Strom: Or to start operating.

Ms. Kelch: No, to continue operating. You have to have an application in, to in fact be applying for a permanent authority before this would be given.

Mr. Cousens: Can I just ask a question? Does the registrar have to make a listing to anyone of those for whom special consideration has been given under section 8, so that there is at least some reporting on the registrar's function with regard to this?

Ms. Kelch: The issuance of any licence is public, so this would be public as well.

Mr. Cousens: Do you make a monthly report then that goes to the deputy or goes to the board, and they would then see the numbers that are there, so there can be a monitoring of this usage?

Ms. Kelch: I do not report to the board. The registrar does not report to the board, but certainly in terms of the deputy minister, I would monitor this number and if for some reason I felt that it required reporting to the deputy, I would have to use that judgement.

Mr. Cousens: That is a power that you have right now, I assume?

Ms. Kelch: Yes.

Mr. Cousens: Do you use it often?

Ms. Kelch: I do not know what "often" means.

Mr. Cousens: How frequently do you use it?

Ms. Kelch: I do not know. I do not know what the number would be. I guess that in itself says the number is not very high.

Mr. Cousens: Yes.

Mr. Chairman: Mr. Morin-Strom, are you finished?

Mr. Morin-Strom: No. I do not see, with the restriction here—the registrar said she can only do it for a business that is already operating, for them to continue to operate. I do not see where that is written in here anywhere.

Ms. Kelch: No, what I said was that you have to have an application in for a permanent authority.

Mr. Morin-Strom: How difficult is that?

Ms. Kelch: In most circumstances, the reason why you would want a

temporary is that you are already operating and there is some circumstance that would not allow you to operate, for example, the death in the family.

Mr. Morin-Strom: What about a big American carrier that wants a quick approval?

Ms. Kelch: I guess I go back to "satisfied that the circumstances warrant it." If the big American carrier here was making application, why would I grant a temporary authority, if in fact they had entered into the process and were going through the process as we do for everyone else?

Mr. Morin-Strom: The cases of the transfers of corporations, would that—

Ms. Kelch: That was another example we talked about the other day.

Mr. Morin-Strom: Would that probably be one of the more frequent applications?

Ms. Kelch: Yes.

Mr. McCombe: This is intended to introduce a certain amount of flexibility to deal with particular circumstances. It is not intended to, in any sense, substantially broaden the discretion and the power of the registrar.

Mr. Morin-Strom: Is there any appeal—

Mr. McCombe: You have to build these kinds of flexibility things in.

Mr. Morin-Strom: Is there an appeal possible to the issuance of a temporary licence?

Ms. Kelch: Not right now, no. Again, I guess the reason there is not one occurs because the issue is very much one of satisfying a temporary concern.

Mr. McCombe: There is always judicial review of the decision of a tribunal. This is a tribunal.

Mr. McGuigan: Would this not be most aptly used in a father-and-son case?

Ms. Kelch: Yes.

Mr. McGuigan: Where the father dies, gets out of the business, whatever.

Ms. Kelch: That was the example we had the other day.

Mr. Dietsch: Or a mother's son.

Interjections.

Mr. McGuigan: If I, for instance, decided I wanted to start up a brand-new trucking company, why would you give me a temporary licence rather than tell me to go through the normal processes?

Mr. Hobbs: And that is the case.

Ms. Kelch: That is the point.

Mr. McGuigan: I suppose if it were under a wartime situation, or some such thing as that. You suddenly have to build an airport and you need a—

Ms. Kelch: An emergency, yes.

Mr. Chairman: Anything else?

Mr. Morin-Strom: I guess if we do not need it for new businesses, then I suppose we could have excluded new businesses from this provision.

Ms. Kelch: Except again, I think that we are not saying that it would absolutely never apply to a new business. To go back to the example Mr. McGuigan is using, under wartime or emergency circumstances, if it is a new business that has to start up to serve that, then this is the flexibility that allows it to happen.

Mr. McCombe: One example that comes to mind was a strike in the United States, if I remember correctly, that closed down the transportation of fertilizer in the spring, just at the time the fields had to have the fertilizer applied. It was considered essential to be able to move those materials. It was through the temporary authority that that could be done, because those that had the existing authority were strikebound.

Mr. Dietsch: I think you already used one example to vote for Morin-Strom.

Mr. Morin-Strom: I wasn't the most convincing example, I don't think.

Interjections.

Mr. Morin-Strom: That's for the brotherhood.

Mr. Cousens: He has my support now.

Mr. Dietsch: Let's call the questions and find out how the vote goes.

Mr. Chairman: Any further comments on section 8? Ready for the question? All those in favour? All those opposed?

Section 8 agreed to.

Section 9:

Mr. Morin-Strom moves that clause 9(1)(a) be amended by deleting the word "significant" before the term "detrimental effect on the public interest."

Do you wish to speak to your amendment Mr. Morin-Strom?

Mr. Morin-Strom: I think we have received lots of testimony on this particular word and the fact that the minister has significantly changed the meaning of the public interest test by putting the word "significant" in front of the word "detrimental" instead of just talking about detriment to the public interest.

Mr. Dietsch: Maybe you could explain what you mean by "the minister has significantly changed."

Mr. Hobbs: Mr. Morin-Strom, in terms of (inaudible) there never has been a public interest test.

Mr. Morin-Strom: It seems to me that the government has previously issued guidelines to the board, with respect to the Motor Vehicle Transport Act, which tried to get the Ontario Highway Transport Board to impose a stricter test that would use the words "significant detrimental" in it. I guess I could go through, or maybe I should not go through some of this judgement of the court case that was recently decided and what the judges said in terms of the impact of putting that word "significant" in front of "detrimental."

I refer to page 22 of file 635/88 and 323/88 of the Supreme Court of Ontario, Divisional Court, Rosenberg, McKeowan and Arbour JJ.: "On May 7, 1988, the Minister of Transportation published in the Ontario Gazette a set of 'Guidelines for Public Interest Tests.' In considering the 23 applications for extraprovincial trucking licences listed in the style of cause, a majority of the board determined that it did not have evidence that satisfied it that, in the absence of evidence to the contrary, the operation of any of these extraprovincial truck undertakings would likely be detrimental to the public interest....The board noted that the guidelines imposed a stricter test of showing 'significant detrimental impact,' which imposes a burden on the respondents that is more difficult to satisfy."

That is the end of that quote on page 22. The statement on page 22 goes on: "The majority of the board indicated its intention to follow the guidelines:

"'The board intends to follow the guidelines. We recognize that the issue of the minister's jurisdiction in these matters is before the Divisional Court. The validity of the guidelines depends on the Minister's having the jurisdiction to issue them,'" and so on.

In this court decision, in fact, one of the questions that was addressed is, "Are the 'Guidelines for Public Interest Tests' valid?" On page 44 in the final decision on this particular question we have: "Counsel for the minister argued that the guidelines were submitted to the board for their approval and that therefore they would be, when approved by the board, valid guidelines. Even if this were consistent with the fact, the answer to the question posed would be no, as they have not been approved by the board. However, it is clear from the reasons of the board that they do not regard the guidelines as requiring their approval but as expressions of the ministry's policy. With regard to the language of the guidelines, they cannot be valid as they purport to make mandatory some of the guidelines proposed."

I am on page 45 now. "There is another and more important reason why the guidelines are invalid in that they purport to change the test by adding the word 'significant.' It is a fundamental principle of statutory interpretation that each word must be, if possible, given a meaning. The word 'significant' accordingly must make the role of the person who objects to the issue of the licence more difficult and different from the criteria set by Parliament."

Those guidelines were ruled invalid by this court. As a matter of fact, even with the appeal that was launched by the minister, my understanding is the minister did not appeal the answer on this question and therefore the minister accepts the decision of the court on the question of the guidelines

Mr. Carrothers: On a point of order, Mr. Chairman: I wonder what the relevance of the validity of a set of guidelines under another act is to the word "significant" in this piece of legislation. I have listened very carefully to Mr. Morin-Strom and I am a little confused and wonder if this might be out of order.

Mr. Chairman: The chair is at a disadvantage since I was conferring with another member of the committee while that was being discussed.

Hon. Mr. Fulton: Mr. Carrothers is right.

Mr. Dietsch: Now there is an unbiased opinion.

Mr. McGuigan: Mr. Chairman, you got lost, like the rest of us.

Mr. Chairman: Mr. Morin-Strom, do you want to respond to this scurrilous attack upon you—

Mr. Morin-Strom: No. I missed the whole thing, fortunately.

Mr. Chairman: You were talking to the same person I was. Have you completed your comments on your proposed amendment?

Mr. Morin-Strom: I have completed my comments on the court case that the minister has lost.

When it comes to the issue of "significant," we had other testimony before our committee during our public hearings, and I read from our learned research officer's notes from the submission of the Canadian Transport Lawyers' Association:

"If...it is the intention of the Legislature that there be a meaningful public interest test, both with respect to extraprovincial and interprovincial trucking operations," it is suggested that the following changes be made: First, the "test should be changed from 'significant detriment to the public interest' to simply 'detriment to the public interest.' This change would make the public interest test somewhat easier to apply and would result in there being identical tests for both interprovincial and extraprovincial trucking operations..."

Clause "9(1)(a)," which is the one we are dealing with, and subsections "10(1) and (2) and (3) of TTA should be amended to eliminate the word 'significant' before the term 'detriment to the public interest.'"

I guess I would ask the minister why we are going offside with the extraprovincial requirement that it be significant, that it be just a detriment—

Ms. Collins: That is just to slow you down.

Mr. Morin-Strom: Well, I can slow down, I suppose.

I understand the federal legislation refers to "detriment to the public interest." Why are we going to ask for "significant detriment to the public interest"?

Hon. Mr. Fulton: There is always the possibility of improving upon the federal legislation, for one thing. We think you have to qualify the

detriment. The opposite of significant would be frivolous. I am sure you would not want to insert that. I will ask Mr. Carrothers to define the rule or the authority in legal precedence that the word "significant" is a legally defined term. I ask Mr. Carrothers to explain that, since he is the only learned member around this table, except for the chairman.

Mr. Chairman: Really. We will ask the learned member. Go ahead.

Mr. Carrothers: I think Mr. Morin-Strom made the point earlier in his comments: we are making in this legislation a very definite change in how the public interest test works. It is now a safety net. The only way that would operate would be if we had a test only if there was a significant difficulty. Any application could be considered a detriment, and you want it only as a safety net. The only way you are going to accomplish that is to have some kind of modifier on when you get it. "Significant" is the kind of term which is widely used, I must confess.

I could probably find you pages and pages of interpretations of that term which would indicate that there has to be a significant problem, a major problem, something of importance, to have a public interest test surrounding the application. It is a major change. I am quite glad that the member has noticed that.

Mr. Dietsch: I see the discussion centring around the one word "significant," and I am wondering whether or not the honourable member would lean towards dealing with significance—as it is placed in more than item here—as we did when we dealt with "board." For expediency's sake, my understanding is, in reading the notes from the researcher, that it is relayed in a number of other clauses, and I would like to suggest to the chair, who is far more experienced with this sort of thing than I am, but none the less, perhaps we could deal with that in dealing with all the clauses that it reflects, so that we can sort of speed up the approach, rather than rehash this very important argument on a continued basis at each clause.

1730

Mr. Chairman: I am not sure that it plays that significant a role in the balance of the bill, but I do take your point. I would agree that it would be useful if it starts to take shape that way. It is like the word "board" versus "registrar." I really would make a ruling on that, if it came to debating every clause.

Mr. Dietsch: That is my concern and the reason I bring it early so that we do not get into that debate later on.

Mr. Chairman: Okay. To be forewarned is forearmed, as Ms. Collins would say.

Mr. Morin-Strom: I am glad Mr. Carrothers recognizes that the word "significant" does make a big impact.

Mr. Carrothers: A significant word.

Mr. Morin-Strom: That is right. That is why I brought forward the court judgement which clearly indicated that. That throws into question why, when we have a minister or government that has been claiming it is trying to harmonize this deregulation with other provinces, they went offside on this one by being significantly different, as has been pointed out. This makes a

significant difference to the meaning of the public interest test. Why have we not adopted the same language as the federal?

Mr. Carrothers: I understand we have. There was some clarification here.

Mr. Morin-Strom: No.

Hon. Mr. Fulton: Sorry. With references to the wording, Mr. Carrothers wanted to know whether or not we had adopted the identical wording of the federal legislation.

Mr. Morin-Strom: No, the federal does not include the word "significant."

Mr. McCombe: No. We advised them that their drafting is deficient, but they did not get around to improving it.

Mr. Morin-Strom: I see. So this is a case where we are better being offside with the federal.

Mr. McCombe: We went to Ottawa and tried to help them. They always will take advantage of good advice.

Mr. Morin-Strom: What is the big advantage to Ontario of eliminating the word "significant" here?

Mr. Carrothers: Back to my point. It is to get rid of frivolous and vexatious public interest and to simply have it when it is important or material. It is a concept you will find throughout many pieces of legislation. Securities is one.

You deal with significant or important matters and you let go the frivolous and unimportant. That is the purpose: to limit the test to things that are truly important, to not have to be spending all the money and time having tests and public interest hearings relating to things that do not matter very much.

Mr. Morin-Strom: You think we should make a judgement in terms of effects on the public interest as to how serious?

Mr. Carrothers: I believe the import of the legislation is that we will have a public interest hearing if there is a matter of importance to the province to be considered.

Mr. Morin-Strom: Does it make sense to have a different standard of tests within the province than for extraprovincial applications?

Mr. Carrothers: I think, as I have commented before, it is our obligation here to create the most perfect piece of legislation we can. I would think that if we can improve on things, we should.

Mr. McGuigan: It does not take away from federal legislation. It adds to it.

Mr. Carrothers: They may do the same thing, you know. They always have the opportunity of amending their legislation.

Mr. Morin-Strom: I do not think it adds to federal legislation. It further deregulates compared to the federal legislation.

Mr. Dietsch: Maybe they will see the importance of the word "significant" after November 21.

Mr. Morin-Strom: I do not see the relevance of that.

Mr. Chairman: Is there anything further on your amendment, Mr. Morin-Strom?

Mr. Morin-Strom: Perhaps Mr. Dietsch could tell us what is going to happen after November 21.

Mr. Chairman: No, I do not think he should. Anything else on your amendment, Mr. Morin-Strom? Speaking to your amendment?

Mr. Morin-Strom: No, that is all.

Motion negatived.

Mr. Chairman: Shall clause 9(1)(a) and 9(1)(b) carry as in the bill? Carried.

Are there any comments or questions on subsections 2 through 8? That is a good chunk. I do not want to rush the members. I tell you, if you start rushing people on these, it ends up costing you more time than you saved.

All those in favour of subsections 9(2) through 9(8)? Carried.

Section 9 agreed to.

Section 10:

Mr. Chairman: It is a very heavy section. We have, at the last count, 10 amendments to it. The first one, not surprisingly, is subsection 10(1). I have an amendment by Mr. Morin-Strom and also one from the Conservative Party on subsection 10(1).

Perhaps we could deal with Mr. Morin-Strom first on subsection 10(1).

Mr. Morin-Strom: I wonder if we could deal with scheduling for next week. I think we are making a mistake to address section 10 without having the Conservatives here.

Mr. Chairman: Section 10 is a major section of the bill. Mr. Cousens, to be fair, did indicate before he left that we could go ahead. He indicated to the chair that he was leaving but that we should proceed. He did not give me any indication that we should not proceed just because he was not here. If you wanted to raise a point of order on scheduling, Mr. Morin-Strom, please proceed.

Mr. Morin-Strom: I would like to know what our schedule is going to be for next week.

Mr. Chairman: The proposed schedule for next week, and members of the committee will have to consider this, is that the committee not sit on Monday, but complete Bill 88 on Wednesday and not sit on Thursday. Now, the

Thursday schedule is something the committee has to think about because if we wanted to, we could put a request in to start Ministry of Natural Resources estimates on Thursday. It is not a long notice to the ministry or to the critics to start on Thursday, but nevertheless, the committee could do that if they wanted to. It would probably be more considerate to not do that, but on the other hand, if the committee really feels strongly about starting in on our estimates next Thursday, then of course that is what we will do.

So those are the options before us. The committee should make that determination, not the chair.

Hon. Mr. Fulton: A point of clarification. You did say that we would finish the bill on Wednesday.

Mr. Chairman: I understand there were discussions being held, that we would not sit on Monday and that on Wednesday Bill 88 would be completed, clause-by-clause, and on Thursday we would either not sit or deal with the Ministry of Natural Resources estimates, whichever the committee chose.

Are there any comments on that or any disagreement with that proposed schedule? If there are no disagreements, then that is the way we will proceed.

Mr. Dietsch: I do not have any disagreement as long as we are able to meet that time schedule.

Mr. Chairman: If there is an agreement we do that, then presumably we will do that. I think we are people of good faith and we will do that.

Mr. Carrothers: Point of clarification. We do not have a Conservative member present. Has there been any indication to the chairman that that scheduling is acceptable to the Progressive Conservatives?

Mr. Chairman: When Mr. Cousens left and told me that we could proceed today, he also said he had no problems with that schedule.

Mr. Carrothers: Fair enough, then I think in the great spirit of co-operation, we can live with that schedule.

Mr. Chairman: Is it the wish of the committee then, to not begin on section 10 now but rather to leave it until Wednesday and finish it when we do the rest of the bill on Wednesday?

Mr. Carrothers: Would there anything preventing us from starting at this point and continuing? Could we perhaps start and then continue on?

1740

Mr. Chairman: It is up to Mr. Morin-Strom. Do you want to start on section 10?

Mr. Morin-Strom: No.

Mr. Chairman: There is the Conservative critic away. I think that is a clear decision.

Mr. Carrothers: We do have the understanding, though, that the Wednesday would be the last day.

Mr. Chairman: That is not in jeopardy under the—

Mr. Carrothers: That is fair enough.

Mr. Chairman: All right. Are there any—

Mr. Dietsch: Mr. Chairman, with respect to the estimates—

Mr. Chairman: We can make a suggestion that we begin the estimates either next Thursday or the following week.

Mr. Carrothers: You did mention, Mr. Chairman, that there might be short notice. Is there any way you might be able to find out from the critics and the ministry if that will be acceptable to them, that we might make a final determination on Wednesday?

Mr. Chairman: It is pretty tough to make a determination on Wednesday that we will start the estimates the next day. I think we have to make a decision today. I would suggest to the committee that we start estimates the following week. That gives everybody more time, the ministry and the critics.

Mr. Dietsch: I think that is the fair way to go, Mr. Chairman.

Mr. Chairman: No problem with that? Then we will notify the critics and the minister that estimates will start the week of November 21, that Wednesday.

Hon. Mr. Fulton: Are we going to carry on from section 11 now?

Mr. Chairman: No. We are going to adjourn now, if that is the agreement of the committee, and we will start on section 10 on Wednesday. All right. Any other business? We are adjourned until next Wednesday.

The committee adjourned at 5:42 p.m.

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STANDING COMMITTEE ON RESOURCES DEVELOPMENT

ONTARIO HIGHWAY TRANSPORT BOARD AMENDMENT ACT
TRUCK TRANSPORTATION ACT

WEDNESDAY, NOVEMBER 16, 1988



STANDING COMMITTEE ON RESOURCES DEVELOPMENT

CHAIRMAN: Laughren, Floyd (Nickel Belt NDP)

VICE-CHAIRMAN: Wildman, Bud (Algoma NDP)

Black, Kenneth H. (Muskoka-Georgian Bay L)

Brown, Michael A. (Algoma-Manitoulin L)

Dietsch, Michael M. (St. Catharines-Brock L)

Grier, Ruth A. (Etobicoke-Lakeshore NDP)

Marland, Margaret (Mississauga South PC)

McGuigan, James F. (Essex-Kent L)

Stoner, Norah (Durham West L)

Tatham, Charlie (Oxford L)

Wiseman, Douglas J. (Lanark-Renfrew PC)

Substitutions:

Carrothers, Douglas A. (Oakville South L) for Mr. Brown

Miller, Gordon I. (Norfolk L) for Mrs. Stoner

Pouliot, Gilles (Lake Nipigon NDP) for Mrs. Grier

Roberts, Marietta L. D. (Elgin L) for Mr. Tatham

Clerk: Mellor, Lynn

Staff:

Richmond, Jerry M., Research Officer, Legislative Research Service

Yurkow, Russell, Legislative Counsel

Witnesses:

From the Ministry of Transportation:

Fulton, Hon. Ed, Minister of Transportation (Scarborough East L)

Hobbs, David G., Deputy Minister

Kelch, Margaret, Assistant Deputy Minister, Safety and Regulation

McCombe, C. Jeffares, Director, Office of Legal Services

LEGISLATIVE ASSEMBLY OF ONTARIO
STANDING COMMITTEE ON RESOURCES DEVELOPMENT

Wednesday, November 16, 1988

The committee met at 3:35 p.m. in committee room 1.

TRUCK TRANSPORTATION ACT
(continued)

Consideration of Bill 88, An Act to regulate Truck Transportation.

Mr. Chairman: The resources development committee will come to order. When we adjourned last week on Bill 88, An Act to regulate Truck Transportation, it was agreed by members of the committee that we would complete discussion of clause-by-clause today, not sit tomorrow, and, as the Legislature does not sit next Monday because of the federal election, a week from today we would commence the estimates of the Ministry of Natural Resources.

The critics have indicated that they will be making reasonably substantial opening statements. The minister indicated today, if he was serious, he would have two and a half hours for an opening statement. Whether or not he really is serious about that, we will see next week. But I think what we should plan on, so members know, is that the first day we will simply deal with the minister's opening statement and the responses, if there is time, by the two critics. Is that agreeable?

Mr. Pouliot: On a point of order, Mr. Chairman: I am somewhat appalled. I wish to be on record that I oppose the views of the majority in terms of adjourning or limiting or invoking closure to what is, indeed, a very important piece of legislation. I, for one, feel that a lot more time should be allocated because the ramifications regarding this ill-thought-out proposed legislation are immense and affect people on a daily basis, especially in our special part of Ontario.

Again, I am somewhat shocked that the committee, in its wisdom, would invoke closure on what is perhaps one of the most important pieces of legislation put forward by the government.

Mr. McGuigan: I have to protest the use of the word "closure." Closure has never been mentioned or thought of.

Mr. Chairman: Perhaps I could set the record straight. I believe it would be called "closure" if it were a motion that was moved and voted on. What happened was that the committee agreed unanimously to finish the bill today—just so the record is straight.

Are there any other comments before we begin clause-by-clause of Bill 88?

Mr. Black: We could always extend the hours, if that is the wish of the member.

Section 10:

Mr. Chairman: Order, please. We had completed section 9 of the bill and we are about to commence section 10. There are some amendments in section

10. In view of the fact that one of the amendments is to subsections 10(1a) and 10(1b), and since Mrs. Marland had indicated that we should start in her absence, I wonder if it would be a bit much to carry the—

Clerk of the Committee: They would be new subsections. So they would come after this amendment.

Mr. Chairman: So it would not be affecting Mrs. Marland's motion?

Clerk of the Committee: It would be this one.

Mr. Chairman: Yes, and that is by Mr. Morin-Strom.

Are there any comments or amendments on subsection 10(1)? Mrs. Marland's amendments were additions; namely, subsections 10(1a) and 10(1b). Are there any comments, questions or amendments prior to that, in other words, in subsection 10(1)?

Mr. Pouliot moves that subsection 10(1) be amended by deleting the word "significant."

Mr. Pouliot has suggested that the word "significant" be removed from subsection 10(1). I should remind Mr. Pouliot that back in clause 9(1)(a), we had a substantial debate on the use of the word "significant." I think it would be inappropriate to have that debate again on the word "significant," although if you want to move it we could deal with it. But I would not entertain a major debate on it again.

1540

Mr. Pouliot: I will just move the resolution; let us vote on it. The fact is, "significant," if allowed to be in the clause, renders the remaining articles rather insignificant in themselves, because the onus will be on "significant" and it is in terms of public interest that it becomes very difficult with the word "significant" in it.

Mr. Chairman: Yes. I do not want to restrict your ability to move amendments, because that is what we are here for. My only concern is that the word "significant" comes up again and again in the bill and I do not think that you would want that to occur, either.

Mr. Carrothers: Mr. Chairman, subsection 10(1) is dealing with things that are to be considered at the hearing conducted in a public interest test and, in fact, the criteria under which a public interest test would start is in section 9 and, as you have mentioned, we did have a significant debate, if I could use that term, on the word "significant" in that section. I am wondering if it is really in order at all to deal with an amendment to subsection 10(1) which has words that really derive from section 9, on which we had debates and a vote on the use of the term.

Mr. Chairman: It certainly, at best, is a grey area—I am not disagreeing with you— but Mr. Pouliot has moved it and I ruled that it was in order to start with, so could we deal with that now?

All those in favour of Mr. Pouliot's resolution? Opposed? The motion is defeated.

Mr. Pouliot: I can take a hint.

Mr. Black: I was prepared to be convinced, but I did not find the arguments compelling.

Mr. Chairman: Any other comments or questions on subsection 10(1)?
Carried.

In the interest of fairness, is it agreed by members that we will leave subsection 10(1a), the additions that Mrs. Marland will move, until she comes back?

Anything else in subsection 10(2)? Any comments or amendments?
Subsection 10(3)?

Clerk of the Committee: There was an amendment on subsection 10(2) proposed by Mrs. Marland, and there was a government amendment as well.

Mr. Chairman: Oh, I am sorry, that is right. I missed an amendment that was to be proposed and, in fact, there are a couple of them.

Mr. Carrothers: Can we reopen subsection 10(3)?

Mr. Chairman: Can we reopen subsection 10(3)? I was a little quick on the draw there.

Mr. Carrothers moves that subsection 10(3) be amended by striking out the words "board finds" in the second line and inserting in lieu thereof the words "board's decision is."

Do you wish to speak to that?

Mr. Carrothers: Yes, Mr. Chairman, if you would bear with me for a second. I believe this is a question of clarification, something which came up from presentations by the Canadian Transport Lawyers' Association. To make very clear what it is, we are dealing with accounts from the board, the board's decision instead of the board's finding. It is more a clarification, a technical kind of thing that would remove any possibility of ambiguity in this section.

Mr. Chairman: All right, the amendment is understood? Any further comments to Mr. Carrother's amendment? If not, shall Mr. Carrother's amendment carry? Carried. Anything further? Mrs. Marland has an amendment on subsection 10(3).

Mr. Carrothers: I wonder if I could move a point of clarification. The words "board finds" also turn up in subsection 10(2); I am wondering if the same amendment should be made. I am just going through my notes. I will just pause for a second; I just want to get clarification. Might I just return to subsection 10(2)?

Mr. Chairman: Is there unanimous consent to go back to subsection 10(2)?

Agreed to.

Mr. Chairman: Mr. Carrothers moves that subsection 10(2) of the bill be amended by striking out the words "board finds" in the second line and inserting in lieu thereof the words "board's decision is."

For the same reasons?

Mr. Carrothers: For the same reasons.

Mr. Chairman: Any other comments or questions? Shall Mr. Carrothers's amendment to subsection 10(2) carry?

Motion agreed to.

Mr. Chairman: I suggest we leave subsection 10(3), as amended by Mr. Carrothers, until Mrs. Marland gets here.

Mr. Carrothers: Is subsection 10(4) the same? Is there a Progressive Conservative motion for that one as well?

Mr. Chairman: Can we leave subsection 10(4) as well? We will come back to that one.

Any comments or questions on subsection 10(5)? Shall 10(5) carry? Carried.

That means we will go back to subsections 10(3) and 10(4) and clauses 10(1)(a) and 10(1)(b).

Mr. Carrothers: Before the end of the day.

Mr. Chairman: Before the end of the day. Mr. Pouliot.

Mr. Pouliot: We looked at the proposed reciprocity amendment, which would strike at the very heart of the bill, in consultation with my colleagues and also in view of the rather systematic and deliberate rejection of the voices of reason. When those voices are heckled by members of the opposition, we have decided not to be viewed as wasting the time of the members of the committee, because we are speaking in the desert here. Suffice it to mention that without our proposed reciprocity amendment, the government risks to be judged very, very harshly.

We certainly understand that the people have agreed to carry the guilt in this ill-fated bill. We do not feel that the playing field is level and we do not think it is an exchange; it is a one-way street and it is indeed a sellout.

The minister could have said: "No, we won't do it this time. We will listen to the voice of wisdom and reason by members of the opposition and we'll do it together." Again, maybe I am somewhat too candid. If we cannot be successful in having a simple word such as "significant," which has not been defined—I mean, we are all too aware of our success in going to the heart of the matter.

In fact, very candidly and in conclusion, we have so many amendments prepared but we are not even going to first base. We are not given proper consideration. My feeling borders on indignation at the way we are being treated in terms of the hours after hours that we put into preparing and drafting those amendments. It is very time-consuming and emotionally draining and very energy draining. In fact, I am not going to propose any more amendments this afternoon because there was a tacit, or not so tacit, agreement made in respect of time. I am really against almost every portion of the bill, so I would not know where to begin with amendments. I am not going

to put them out one by one, but I want to be on record to say that I am against the whole bill.

1550

Mr. Chairman: Thank you.

Mr. Carrothers, this is on which section of the bill? The same section Mr. Pouliot was on?

Mr. Carrothers: The same section Mr. Pouliot was referring to.

Mr. Chairman: That is what I thought.

Mr. Pouliot: Sections.

Mr. Carrothers: I just wanted to express, on behalf of my colleagues on the committee, our pleasure that Mr. Pouliot was able to be here today to keep us focused on the important issues that are before us. If Mr. Pouliot had been at the committee these past few weeks, though, he would have seen the very extensive discussions and debates we have had on the very issues he has just raised. I would like to indicate that I think we have discussed them and we have not been arbitrary.

Mr. Pouliot: I do not wish to get into the kind of contest that my good friend Mr. Carrothers is trying to lure me into, but I do not have any explanation to give to members of the government for my absence from the committee in the past two weeks. I chose to notice first hand in northwestern Ontario, travelling literally thousands of miles in the past two weeks to see the ramifications that this bill would have in terms of essential services, necessity and convenience to our public there. The only way you are able to see this is by physically being there. I was very judicious with my time.

Mr. Chairman: Do you wish to reply, Mr. Carrothers?

Mr. Carrothers: If I might, just for a second.

Mr. Chairman: You do know what you are doing here, do you?

Interjection: Don't feed the bears.

Mr. Carrothers: I am just saying we appreciate very much Mr. Pouliot's coming and providing us with that perspective.

Mr. Pouliot: Do you think it is easy going door to door?

Mr. Chairman: All right, let's get back to the bill.

Section 11:

Mr. Chairman: We are now at section 11 of the bill. Are there any comments, questions or amendments on section 11 of the bill?

Miss Roberts: I assume that you are being the guardian of the Progressive Conservative amendments with respect to this.

Mr. Chairman: Yes, we are. There are no PC amendments to this.

Miss Roberts: I do not want to have them feel as if they are not being appropriately guarded.

Mr. Chairman: No. There were very clear instructions to go ahead. The next section the PCs have is 38.

Section 11 agreed to.

Sections 12 and 13 agreed to.

Mr. Dietsch: Was this is the one Mr. Pouliot was going across the top of the province with, the trip permit here?

Mr. Chairman: I do not think so.

Mr. Dietsch: That is not the one?

Mr. Chairman: I do not want to restrict Mr. Dietsch's right to debate these various sections, but can we move on to section 14?

Mr. Black: Yes, we can, Mr. Chairman.

Sections 14 and 15 agreed to.

Section 16:

Mr. Chairman: We have a government motion. Shall subsections 16(1) to 16(8) carry? Carried.

Mr. Carrothers moves that a subsection 9 be added to section 16 of the bill, to read as follows:

"(9) The holder of an operating licence issued pursuant to an application to which subsection 6(5) applies is exempt from the application of subsection 1 with respect to the carriage of goods during the 18-month period starting on the implementation date."

Mr. Carrothers: This is a corollary to an amendment we made back to subsection 6(5), just to complete the task.

Mr. Chairman: Any comments or questions? Shall Mr. Carrothers's amendment carry?

Motion agreed to.

Section 16, as amended, agreed to.

Section 17 agreed to.

Section 18:

Mr. Chairman: There is a government amendment. Shall subsections 18(1) and 18(2) carry? Carried.

Mr. Carrothers moves that subsection 18(3) of the bill be amended by striking out the words "subsection 2 does not apply to a licensee who charges the toll" in the first and second lines and inserting in lieu thereof the words "subsections 1 and 2 do not apply to a tariff or toll charged."

Do you wish to speak to that?

Mr. Carrothers: This is another question of clarification regarding tariffs, again a suggestion by the Canadian Transport Lawyers' Association. This amendment will clarify subsection 18(1), which requires tariffs to be published. This requirement should not apply to confidential contracts. The amendment is removing a requirement for the publishing of contracts.

Mr. Chairman: Are there any comments on Mr. Carrothers's amendment to subsection 18(3)? Shall Mr. Carrothers' amendment carry?

Motion agreed to.

Section 18, as amended, agreed to.

Sections 19 to 21, inclusive, agreed to.

Mr. Chairman: I have an amendment on section 38 by the Progressive Conservatives.

Mr. Carrothers: There is one on subsection 22(9) as well.

Mr. Chairman: I do not have it.

Clerk of the Committee: It has not been distributed.

Section 22:

Mr. Chairman: Shall subsections 22(1) to 22(8) carry? Carried.

Mr. Carrothers moves that subsection 22(9) of the bill be struck out and the following substituted therefor:

"(9) Where there is a conviction in respect of a charge referred to in subsection 7, all costs necessarily incurred in detaining and storing a vehicle under subsection 3 shall be a lien on the vehicle."

Mr. Carrothers: This is in response to some commentary by a company, Volume Tank Transport Inc., and clarifies the fact that costs for such detention are only going to be charged if there is a guilty conviction. It removes an ambiguity in the wording.

Mr. Chairman: Shall Mr. Carrothers's amendment to subsection 22(9) carry?

Motion agreed to.

Section 22, as amended, agreed to.

Mr. Chairman: Is there anything between sections 23 and 38? I have no amendments before me.

Mr. Carrothers: I have none.

Mr. Chairman: Shall sections 23 to 37, inclusive, carry?

Sections 23 to 37, inclusive, agreed to.

Section 38:

Clerk of the Committee: That is adding a new subsection 1a.

Mr. Chairman: Shall subsections 38(1) and 38(2) carry as in the bill? Carried.

We have agreed to hold the amendment until Mrs. Marland is here.

Sections 39 to 45, inclusive, agreed to.

Mr. Chairman: The clerk is going to phone the PC office to see if they want to get someone here before we completely tidy up the bill. It is a courtesy to allow them to do so. We could proceed, but I think it would be appropriate to allow it.

Mr. Carrothers: It is a gesture of our magnanimity and the desire to have a full discussion.

Mr. Chairman: That is correct.

Mr. McGuigan: It is called open government.

Mr. Black: We want all reasonable voices to be heard.

Hon. Mr. Fulton: That should be "significant" voices, significantly reasonable voices.

Mr. Chairman: Let us not adjourn; but let us recess for a few minutes until we get a response from the clerk.

The committee recessed at 4:01 p.m.

1609

Mr. Chairman: Let us come back to the business of the day.

Going back to subsections 10(1a) and (1b), which are, as I recall, additions to subsection 10(1), we have an amendment by Mrs. Marland.

Mrs. Marland moves that section 10 of the bill be amended by adding thereto the following subsections:

"(1a) In a hearing to conduct a public interest test, the board shall also determine if the applicant is resident in, or is controlled directly or indirectly by a person resident in a jurisdiction in which the granting of a similar operating authority is dependent on entry criteria that are more onerous than those set out above in section 6, and if the board so finds, it shall apply the entry criteria similar to that imposed in the other jurisdiction.

"(1b) Where a person requests that the board hold a hearing to conduct a public interest test on the basis that the applicant is resident in or is controlled by a person described in subsection 1a, the burden of proof rests with the person requesting the hearing."

Thank you, Mrs. Marland. Do you wish to call the question or do you wish a debate? Are you ready for the question?

Mrs. Marland: Yes, I am.

Mr. Chairman: All those in favour of Mrs. Marland's amendment, please indicate. Opposed?

Motion negatived.

Mr. Chairman: Mrs. Marland moves that subsection 10(3) of the bill be struck out and the following substituted therefor:

"(3) Where, after a hearing to conduct a public interest test, the board finds that granting the operating authority applied for will likely have a significant detrimental effect on the public interest in the market proposed to be served, the board shall deny the granting of the authority."

Motion negatived.

Mr. Chairman: Shall 10(3) carry as in the bill? Carried.

Clerk of the Committee: As amended.

Mr. Chairman: Yes, it is carried as amended.

Mrs. Marland moves that subsection 10(4) of the bill be amended by striking out "or 3" in the first line.

All those in favour of Mrs. Marland's amendment, please indicate. Opposed?

Motion negatived.

Mr. Chairman: Shall subsection 10(4) carry as in the bill? Carried.

Mrs. Marland moves that section 38 of the bill be amended by adding thereto the following subsection:

"(1a) The minister shall direct the board to undertake as its first priority a study to implement a procedure that would reasonably compensate trucking operators for their loss of operating authority under deregulation."

Mrs. Marland: How could you vote against that?

Mr. Chairman: I think we are going to see. All those in favour of Mrs. Marland's amendment? Opposed?

Motion negatived.

Mr. Chairman: We have already passed section 38, as in the bill.

Those are all the sections of the bill dealt with.

Title agreed to.

Bill, as amended, ordered to be reported.

Mr. Chairman: This completes the study of Bill 88. I must commend members for the expeditious way in which they debated the bill and carried it through. I thank the staff of the Ministry of Transportation for its assistance during these debates.

Hon. Mr. Fulton: May I thank the committee members from all three parties for their input and their deliberation. It has been a long, arduous time, I think, for everyone who has been involved in these three particular pieces of legislation.

If I could just take moment—and I think I speak for all members of the standing committee on resources development, Mr. Chairman, and certainly our staff and myself personally as the minister—to commend you on the manner in which you, with a great sense of fairness and parliamentary presence, have conducted these hearings and allowed everyone to participate to the fullest extent. I want to commend you on the way you have handled these deliberations.

Mr. Chairman: Thank you.

We shall be adjourned until next Wednesday afternoon, when we will commence the estimates of the Ministry of Natural Resources. I can assure you it will be an entertaining afternoon. I hope to see you then.

The committee adjourned at 4:16 p.m.

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